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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. 175.

MINNESOTA STATE LIBRARY.

J. D. COMPTON, PLAINTIFF IN ERROR,

vs.

THE STATE OF ALABAMA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ALABAMA.

FILED SEPTEMBER 9, 1907.

(20,850.)

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SUPREME COURT OF THE UNITED STATES.

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ERROR TO THE SUPREME COURT OF THE STATE OF ALABAMA.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 31, 1908.

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1 THE STATE OF ALABAMA, *Montgomery County:*

Be it remembered that at a term of the City Court of Montgomery begun and holden for said County, at the Court-House in the City of Montgomery, State and County, aforesaid, on the second Monday in October, in the year of our Lord, One thousand, nine hundred and six, it being the eighth (8th) day of said month—present, the Honorable William H. Thomas, Associate Judge, Presiding in the Criminal Division of said Court—the following proceedings were had and the following judgments were rendered, to wit:

STATE OF ALABAMA, *Montgomery County:*

To the Hon. W. H. Thomas, Associate Judge of the City Court of Montgomery:

Your petitioner J. D. Compton respectfully states unto your Honor that he is unlawfully restrained of his liberty by Josia Tye under a demand made by the Governor of the State of Georgia proceedings had in the State of Georgia, on the Governor of Alabama and on the warrant of the Governor of Alabama. Affiant hereto attaches a copy of said papers.

Affiant says that he is a citizen of the State of Alabama and states on information and belief that said proceedings were instituted in the State of Georgia for no other purpose than to compel affiant to pay a demand which the parties who are instrumental in having said proceedings instituted, claim against petitioner.

That petitioner has only a short while in which to sue out this writ before the train leaves for Atlanta, Georgia, on which he will be carried to that State and therefore has not the time to set out all the facts and circumstances, including transaction- that have occurred in this State with the representative of said parties in reference to said matters. The affiant bought certain stock—mules etc.

2 from certain parties in Alabama and drew a check on the Fourth National Bank of Montgomery, Alabama, for about $3659.12 signing thereto the name of Chastain & Sons per J. D. Compton. That he had drawn on said the same parties for payment of stock bought at St. Louis and his draft was paid. That he was authorized to draw said last check or draft by J. W. Chastain and after it reached Montgomery said Chastain offered to pay it but it was not then paid because of a defect in one of the mules for which petitioner claimed an offset. That said Chastain subsequently repudiated petitioner's authority to draw said check and refused to pay the same. That said Georgia parties then employed attorneys in Montgomery. That after some negotiations affiant wrote said attorneys a letter of which a carbon copy will be shown in evidence. That on the terms stated in said letter said parties accepted the remainder of the stock which affiant had purchased and which was unsold together with other stock belonging to affiant. That immediately after said acceptance they then went to Georgia and sued out the warrant upon which affiant is arrested. Affiant has demanded a copy

of the proceedings had in Georgia from the Agent of the State of Georgia as also a copy of the warrant of the Governor of Alabama based thereon. Affiant states upon advice of counsel that said proceedings are irregular and constitute no lawful reason for the detention of affiant. That he is not a fugitive from justice.

Wherefore affiant prays that Josia Tye be compelled to produce the body of affiant before your Honor and that your Honor *to* cause the release of your affiant from custody.

J. D. COMPTON.

Sworn to and subscribed before me, this the 29th day of Jan. 1907.
WILEY C. HILL,
Notary Public.

THE STATE OF GEORGIA:

The Governor of the State of Georgia to all to whom these presents shall come, Greeting.

Whereas it has been officially represented to me that J. D. Compton stands charged by officers in Fulton County, State of Georgia
3 with the offense of being a common cheat and swindler, and
Whereas, I have made application to his Excellency the Governor of the State of Alabama for the delivery of the said J. D. Compton as fugitive from justice and have appointed and by these presents do appoint and commission Joshua Tye agent on the part of this State for the purpose of bringing the said J. D. Compton to this State, having jurisdiction of his crime aforesaid, whenever the Governor of the State of Alabama shall cause him to be delivered up agreeably to the requisition aforesaid.

These are therefore to request and require all persons to permit the said Joshua Tye to receive and secure the said J. D. Compton and bring him unmolested into this State, having jurisdiction of his crime.

Given under my hand and the seal of the executive department at the capitol, in the City of Atlanta, the 28th day of January in the year of Our Lord 1907, and of the Independence of the U. S. of America, the one hundred and thirty first.

J. M. TERRELL, *Governor.*

By the Governor:
WILEY SHOPSHIRE,
Sec'y Executive Department.

Filed in office Jan'y 29th, 1907.

H. N. HUGHES, *Clerk.*

In re J. D. COMPTON, *Habeas Corpus.*

Before Hon. W. H. Thomas, Judge of City Court of Montgomery.

Your petitioner the said J. D. Compton amends his petition for *Habeas Corpus* presented on the 28th day of January 1907 by adding the following:

Petitioner hereto attaches as part of this petition marked Exhibit B a copy of all the papers presented to the Governor of the State of Alabama and on the consideration of which he issued his warrant.

4 Said papers consist, first, of a communication of date January 28th, 1907, "addressed to his Excellency, Jos. M. Terrell, Governor of Georgia" and signed Lowery Arnold, Solicitor Criminal Court of Atlanta; next, a Statement purporting to be signed by J. W. Patterson and to have been sworn to before A. B. Harrison, N. P. stating in substance that he is a prosecutor of the said J. D. Compton and that the requisition is wanted for the sole purpose of punishing the accused and not to collect a debt or money or to force the payment thereof; and lastly, an affidavit purporting to be made by the said J. W. Patterson and to be sworn to before W. W. Troy, N. P. and certified to by Arnold Brayles or Browles, Clerk of the Superior Court, and Ex Officio Clerk Criminal Court of Atlanta.

Petitioner is advised by his counsel and states that said proceedings disclosed by said papers were and are wholly insufficient to authorize the Governor of Alabama to issue his warrant for the arrest of your petitioner or to authorize the detention of your petitioner by the agent of the State of Georgia, in this,

First. That the said affidavit purporting to charge petitioner with the commission of an offense made by J. W. Patterson, it does not appear that said Patterson had any connection with the transactions mentioned or set forth in said affidavit or that he had personal knowledge of the truth of any of the statements made therein, said affidavit purporting to be made upon the information and belief of said Patterson.

Second. Said affidavit appears to have been made merely upon information and belief.

Third. It does not appear from said affidavit or from any of said affidavit or from any of said papers that said affidavit was made before a magistrate as is required to be done by Section 5278 of the revised statutes of the United States.

Fifth. It appears from said affidavit that it was made before a Notary Public before whom as a Magistrate the said prosecution was not to be heard and no other charge under oath appears to have been made against petitioner.

5 Sixth. It does not appear from said affidavit that petitioner made any false representations to the persons from whom he bought said live stock.

Seventh. It does not appear it was any part of the duties of said C. H. Tribby as agent of the sellers of said property to make delivery of said property to the purchaser or to cause such delivery to be made.

Eighth. It does not appear from said papers copied in Exhibit B. hereto attached that petitioner had committed any offense under the laws of the State of Georgia.

Ninth. It does not appear from said papers that petitioner was guilty of the offense of being a common cheat and swindler under the laws of Georgia.

who, relying upon and believing the same, accepted the said d
and allowed the said J. D. Compton to take and ship said s
away, as above stated. Said draft in the regular course of bus
was returned unpaid and remains unpaid. The said J. D. Com
had no authority to sign the name of J. W. Chastain & Son
was not a partner of J. W. Chastain and had no right to sign
name of J. W. Chastain and Son.

By making the statements that he had a right to sign the n
of J. W. Chastain and Son and that he was a partner of J.
Chastain, the said J. D. Compton imposed on the credulity of
said Pat J. Clyatt and did obtain a credit, and did thereby fra
lently get into possession of the horse and mules above stated, s
being of the value of $375.00 contrary to law.

J. W. PATTERSO

Sworn to and subscribed before me this 28th day of Jan. 190
W. W. TROY,
Of Fulton County, Georgia, N.

STATE OF GEORGIA, *County of Fulton:*

I, Arnold Brayles, Clerk Superior Court, *ex officio* clerk Crim
Court of Atlanta, do hereby certify that the foregoing is a true c
of the affidavit of J. W. Patterson accusing J. D. Compton of
offense of misdemeanor. The original affidavit being on file in
office. Witness my hand and seal of Court January 28th, 190

ARNOLD BRAYLES,
Clerk Superior Court and ex Officio
Clerk Criminal Court of Atlant

Filed in office Jan'y 30th, 1907.
W. H. THOMAS,
Associate Judge.

9 THE STATE OF ALABAMA, *Montgomery County:*

In the Matter of Application of J. D. COMPTON for writ of *Ha*
Corpus.

To the Hon. W. H. Thomas, Associate Judge of the City Cour
Montgomery, Alabama:

Now come Joshua Tye and also S. S. Belser, as Sheriff of M
gomery County, Alabama, and for answer to the petition as amen
in said cause as also to the writ served upon them in this ca
separately and severally say:

First. That said S. S. Belser, as Sheriff of said County arre
and delivered into the custody of the said Joshua Tye, and the
Joshua Tye now holds the said petitioner, J. D. Compton, under
by virtue of an executive warrant issued by the Governer of the S
of Alabama, on the 29th day of January, 1907, ordering the arre
the said petitioner, the said J. D. Compton, and his return to

State of Georgia, which said warrant was issued upon the demand of the Governor of the State of Georgia, upon an affidavit, charging the petitioner with the commission of a crime in the State of Georgia on the 15th day of January, 1907; the said warrant so issued by the Governor of Alabama is hereto attached marked Exhibit A. and made a part hereof; that the requisition issued and made by the Governor of the State of Georgia, upon the Governor of the State of Alabama, is hereto attached, marked Exhibit "B" and made a part hereof; that the said Joshua Tye is the person appointed and commissioned as the agent on the part of the State of Georgia, for the purpose of bringing the said J. D. Compton to the said State of Georgia. The Original of said commission so appointing the said Joshua Tye is hereto attached marked Exhibit "C" and made a part hereof;

Wherefore the said Joshua Tye and the said S. S. Belser, as aforesaid, severally, say that the said J. D. Compton is not unlawfully restrained of his liberty by the said Joshua Tye.

JOSHUA TYE.
S. S. BELSER,
Sheriff Montgomery County.

Subscribed and sworn to before me, this the 30th day of January, 1907.

W. H. THOMAS.
Associate Judge.

10 In the name and by the authority of the State of Alabama.

I. B. B. Comer, Governor of the State, to any Sheriff, Coroner, Constable or other Officer authorized by law to make arrests, send Gretting:

Whereas, His Excellency J. M. Terrell, Governor of the State of Georgia, by requisition dated the 28th day of January 1907, has demanded of me, as Governor of the State of Alabama the surrender of J. D. Compton who, it appears, is charged by affidavit in the County of Fulton, in said State, with the crime of being a common cheat and swindler (a duly certified copy of which affidavit accompanies said requisition) and it appearing that said J. D. Compton has fled from justice in said State and taken refuge in the State of Alabama.

Now, Therefore, I, B. B. Comer, Governor of the State of Alabama, in obedience to the Constitution and laws of the United States and the laws of the State of Alabama, do command you to arrest the said J. D. Compton, if he be found within the limits of this State and to deliver him into the custody of Joshua Tye, the duly authorized agent of the State of Georgia.

And of the execution of this warrant you will make due return to me.

In Testimony Whereof, I have hereunto set my hand and caused the Great Seal of the State to be affixed at the Capitol, in the City of Montgomery, this 29th day of January in the year of our Lord

One Thousand Nine Hundred and Seven and in the one hundred thirty first year of American Independence.

[Alabama Great Seal.]

B. B. COMER,
Governor of Alabama.

By the Governor:
FRANK N. JULIAN,
Secretary of State.

Requisition and papers thereto attached, detached from this file, and returned to the Secretary of State's Office, by agreement of parties.

B. P. CRUM.

11 EXECUTIVE DEPARTMENT.

THE STATE OF GEORGIA:

The Governor of the State of Georgia to all to whom these presents shall come, Greeting:

Whereas, It has been officially represented to me that J. D. Compton stands charged by affidavit, in Fulton County, State of Georgia, with the offense of being a common cheat and swindler.

And Whereas, I have made application to His Excellency, the Governor of the State of Alabama for the delivery of the said J. D. Compton as fugitive from justice and have appointed, and by these presents, I do appoint and Commission Joshua Tye agent, on the part of this State for the purpose of bringing the said J. D. Compton to this State, having jurisdiction of his crime aforesaid, whenever, the Governor of the State of Alabama shall cause him to be delivered up agreeably to the requisition aforesaid.

These are, therefore, to request and require all persons to permit the said Joshua Tye to receive and secure the said J. D. Compton and bring him unmolested into this State, having jurisdiction of his crime.

Given under my hand and the seal of the Executive Department, at the Capitol, in the City of Atlanta, the 28th day of January in the year of our Lord, One Thousand, Nine Hundred and Seven, and of the Independence of the United States of America, the One Hundred and thirty first.

[Executive Department, Seal, Georgia.]

J. M. TERRELL, *Governor.*

By the Governor:
WESLEY SHOPSHIRE,
Secretary Executive Department.

Filed in office this Jan'y 30, 1907.
W. H. THOMAS,
Associate Judge.

12 Before Hon. W. H. Thomas, Judge of City Court.

STATE OF ALABAMA
vs.
J. D. COMPTON.

Habeas Corpus Proceedings.

Comes the said J. D. Compton and demurs to the return made by S. S. Belser, as Sheriff of Montgomery County and by Joshue Tye as Agent of the State of Georgia to the petition of said J. D. Compton as amended in the above proceedings, showing upon what authority they hold in custody the said J. D. Compton and assigns as grounds of demurrer thereto the following:

1st. That the said affidavit purporting to be made by J. W. Patterson fails to show that said J. W. Patterson had any connection with the transactions mentioned or set forth in said affidavit or that he had personal knowledge of the truth of any of the statements made therein, said affidavit purporting to be made merely to the best of his knowledge and belief.

2nd. Said affidavit of said J. W. Patterson appears to have been made merely upon information and belief.

3rd. It does not appear from said affidavit or from any affidavit or from any of said papers attached to said return, or otherwise from said return that said affidavit was made before a magistrate as is required to be done by Section 5278 of the Revised Statute- of the United States.

5th. It appears from said affidavit that it was made before a Notary Public, before whom, as a magistrate the said prosecution was not to be heard, and no other charge upon oath appears to have been made against the petitioner J. D. Compton.

6th. It does not appear from said affidavit that petitioner made any false representations to the persons of whom he bought said live stock.

7th. It does not appear from said return that it was any part of the duties of said C. H. Tribby as the agent of the sellers of said property, to make delivery of said property to the purchaser or to cause such delivery to be made.

13 8th. It does not appear from said return or from said papers attached to said return that petitioner had committed any offense under the laws of the State of Georgia.

9th. It does not appear from said papers attached to said return that petitioner was guilty of the offense of being a common cheat and swindler under the laws of Georgia.

10th. It appears from return and from said papers attached to said return that the Governor of Alabama had no authority to issue his warrant in that no indictment found or affidavit charging a criminal offense such as is required by Section 5278 of the Revised Statute- of the United States was certified as authentic by the Governor of the State of Georgia.

11th. The warrant of the Governor of Alabama for the arrest of said J. D. Compton was illegal and void in that it was not supported by an affidavit showing probable cause.

12th. That it did not appear from said return or the exhibits attached to said return that any criminal prosecution was pending before any Court or magistrate against said J. D. Compton.

13th. That it did appear from said return and exhibits attached to said return that the only affidavit made in the State of Georgia was made before a Notary Public and it does not appear that said Notary Public was a "magistrate" under the laws of Georgia.

14th. That the proceedings had in Georgia as shown by the said returns and the exhibits attached to said return did not conform to the requirements of Section 5278 of the Revised Statutes of the United States, in that there was not "produced to the Governor of the State of Alabama a copy of an indictment found or an affidavit made before a magistrate of any State or Territory charging the person demanded, with having committed treason, felony or other crime."

J. M. HILTON,
HILL, HILL & WHITING,
Attorneys for J. D. Compton.

Filed in Office January 30th, 1907.
H. N. HUGHES, *Clerk.*

14 *Ex Parte* J. D. COMPTON.

Petition for Habeas Corpus.

The petition of J. D. Compton, filed January 29th, 1907, for the writ of *Habeas Corpus* releasing him from custody of the Respondents who held him under arrest made by the Sheriff of this County, made on an executive warrant issued by the Governor of Alabama, on January 29th, 1907, upon a requisition from the Governor of Georgia, dated January 28th, 1907, coming on to be heard, comes the State of Alabama, by its attorneys, and also the said J. D. Compton, in person and by his attorneys, and, upon motion of the said petitioner, he is allowed to amend and does amend his petition in said cause by a separate writing this day filed; and thereupon came the respondents, the said S. S. Belser, Sheriff of Montgomery County Alabama, and Joshua Tye, agent of the State of Georgia, and filed their answer or return to the said petition as amended, as also to the writ served upon them in said cause; thereupon the petitioner demurred to said answer or return to said petition and as amended and the demurrers having — argued and considered.

It is ordered and adjudged that the said demurrer be and is overruled, and, after hearing the evidence, I am of the opinion that the said petition should be denied.

It is therefore, ordered and adjudged that the said petition of the said J. D. Compton, for the writ of *habeas corpus* be and the same hereby is denied, and the said Compton be and is remitted and re-

manded to the custody of the said agent of the State of Georgia, for extradition, pursuant to law; and the said Compton having given notice of an appeal to the Supreme Court of Alabama from this order, this judgment is suspended pending said appeal.

It is further ordered that upon the making, by the said Compton of a good and sufficient bond, in the sum of One Thousand Dollars payable to the Clerk of this Court, for the use of the State of Georgia, or the Governor of Georgia, conditioned that upon the affirmance by said Supreme Court of said judgment to appear before the Judge of said City Court, then and there to abide and perform what may then be adjudged by said Judge against him in said prosecution the said Compton be released from custody, pending said appeal and until the further order in the premises. And the State of Alabama also gives notice of an appeal from that part of said order allowing the said Compton to be released on bail pending said appeal.

15

It is further ordered that thirty (30) days from this date be and are allowed for the presentation of a bill of exceptions in said cause by either the said State of Alabama or the defendant or both.

Done this the 30th day of January, 1907.

WILLIAM H. THOMAS,
Associate Judge, City Court of Montgomery.

Filed in office Jan. 30th, 1907.
H. N. HUGHES, *Clerk.*

STATE OF ALABAMA, *Montgomery County:*

Know all men by these presents that we, J. D. Compton, W. R. Waller and W. L. Yelverton are held and firmly bound unto Henry N. Hughes, as Clerk of the City Court of Montgomery, for the use of the State of Georgia, or for the use of the Governor of the State of Georgia in the sum of One Thousand Dollars, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally by these presents. Sealed with our seals and dated this the 30th day of January 1907.

The condition of the above obligation is such that whereas on the 29th day of January 1907 the said J. D. Compton was arrested under requisition papers issued by the Governor of Georgia on the Governor of Alabama, and was delivered to one Joshua Tye as agent of the State of Georgia, and whereas said J. D. Compton did sue out a writ of *habeas corpus* to enquire into the validity of the proceedings by which he was so detained and whereas on hearing said writ was returnable on this the 30th day of January 1907 before Hon. W. H. Thomas, Judge of the City Court of Montgomery, said Judge refused to discharge said J. D. Compton, but remanded him to the custody of said agent of the State of Georgia, and whereas said J. D. Compton desires to appeal from said judgment to the present term of the Supreme Court of Alabama, and to give bond to deliver himself up and to appear before the Judge of said City Court if said judgment shall be affirmed, and the amount of said

16

bond has been fixed by said Hon. W. H. Thomas, Judge of said City Court at the sum of One Thousand Dollars.

Now in case said judgment should be affirmed by said Supreme Court and said J. D. Compton shall thereupon deliver himself up and appear before the Judge of said City Court then and there to abide by and perform what may then be adjudged by said Judge against him in said proceedings then this obligation to be void; otherwise to remain in full force and effect.

J. D. COMPTON. [L. S.]
H. L. YELVERTON. [L. S.]
W. R. WALLER. [L. S.]

Approved This Jan. 30, 1907.
H. N. HUGHES,
Clerk of the City Court of Montgomery.

Filed in office Jan'y 30th, 1907.
H. N. HUGHES, *Clerk.*

Habeas Corpus.

Before Hon. W. H. Thomas, Associate Judge, City Court of Montgomery.

THE STATE OF ALABAMA
vs.
J. D. COMPTON.

On the trial of this cause before the Hon. W. H. Thomas Associate Judge of the City Court of Montgomery on the 30th day of January, 1907, the following proceedings were had:

The petitioner J. D. Compton had presented to the Hon. W. H. Thomas his original petition for *habeas corpus* which, with the Exhibit thereto, was in words and figures following:

STATE OF ALABAMA, *Montgomery County:*

To the Hon. W. H. Thomas, Associate Judge of the City Court of Montgomery:

Your petitioner J. D. Compton respectfully states unto
17 your Honor that he is unlawfully restrained of his liberty by Joshua Tye under a demand made by the Governor of the State of Georgia on proceedings had in the State of Georgia, on the Governor of Alabama and on the warrant of the Governor of Alabama.

Affiant hereto attaches a copy of said papers.

Affiant says that he is a citizen of the State of Alabama and states on information and belief that said proceedings were instituted in the State of Georgia for no other purpose than to compel affiant to pay a demand which the parties who are instrumental in having said proceedings instituted, claim against petitioner.

That petitioner has only a short while in which to sue out this writ before the train leaves for Atlanta, Georgia, on which he will be carried to that State and therefore has not the time to set out all the facts and circumstances, including transactions that have occurred in this State with the representative of said parties in reference to said matters. That affiant bought certain stock—mules, etc. from certain parties in Atlanta, and drew a check on the Fourth National Bank of Montgomery, Ala. for about $3659.12, signing thereto the name of Chastain and Son per J. D. Compton. That he had drawn on the same parties for payment of stock bought at St. Louis and his draft was paid. That he was authorized to draw last check or draft by J. W. Chastain and after he reached Montgomery said Chastain offered to pay it but it was not paid because of a defect in one of the mules for which petitioner claims an off-set. That said Chastain subsequently repudiated petitioners authority to draw said check and refused to pay the same. That said Georgia parties them employed attorneys in Montgomery. That after some negotiations affiant wrote said attorneys a letter of which a carbon copy will be shown in evidence. That on the terms stated in said letter said party accepted the remainder of the stock which affiant had purchased and which was unsold, together with other stock belonging to affiant. But immediately after said acceptance they then went to Georgia and sued out the warrant upon which affiant is arrested. Affiant has demanded a copy of the proceedings had in Georgia from the
18 Agent of the State of Georgia as also a copy of the warrant of the Governor of Alabama based thereon. Affiant states upon advice of counsel that said proceedings are irregular and constitute no lawful reason for detention of affiant. That he is not a fugitive from justice. Wherefore affiant prays that Joshua Tye be compelled to *be* produce the body of affiant before your Honor and that your Honor cause the release of affiant from custody.

J. D. COMPTON.

Sworn to and subscribed before me, this the 29th day of January, 1907.

WILEY C. HILL.
Notary Public.

EXHIBIT "Z."

EXECUTIVE DEPARTMENT.

THE STATE OF GEORGIA:

The Governor of the State of Georgia to all whom these Presents shall come, Greeting:

Whereas, it has been officially represented to me that J. D. Compton stands charged by affidavit in Fulton County, State of Georgia, with the offense of being a common cheat and swindler.

And whereas, I have made application to his excellency the Governor of the State of Alabama for the delivery of the said J. D. Compton as fugitive from justice and have appointed, and by these presents, I do appoint and commission Joshua Tye agent, on the part

of this State for the purpose of bringing the said J. D. Compton to this State, having jurisdiction of his crime aforesaid, whenever the Governor of the State of Alabama shall cause him to be delivered up agreeably to the requisition aforesaid.

These are, therefore, to request and require all persons to permit the said Joshua Tye to receive and secure the said J. D. Compton and bring him unmolested into this State, having jurisdiction of his crime.

Given under my hand and the seal of the Executive Department at the Capitol, in the City of Atlanta, the 28th day of January, in the year of our Lord, One Thousand Nine Hundred and Seven,
19 and of the Independence of the United States of America, the One Hundred and thirty-first.

J. M. TERRELL, *Governor.*

By the Governor:
WESLEY SHOPSHIRE,
Secretary Executive Department.

On said petition being presented to the said Hon. William H. Thomas he made the following order:

STATE OF ALABAMA, *Montgomery County:*

To Joshua Tye and S. S. Belser Sheriff of said County:

Whereas J. D. Compton has made application for the issuance of a writ of *habeas corpus*, and whereas, the same has been granted, you are hereby commanded to have and bring the body of the said J. D. Compton by whatever name he may be called or charged at the Court House in the said County before me on January 30th, 1907, to do and receive what shall then and there be considered concerning said Compton. Notice Solicitor.

W. H. THOMAS,
Associate Judge, &c.

Endorsed: "Filed in office Jan'y 29th, 1907. H. N. Hughes, Clerk.

The body of said J. D. Compton having been produced on said 30th day of January 1907, before the said Hon. W. H. Thomas, as Associate Judge of the City Court of Montgomery, by S. S. Belser as Sheriff of Montgomery County and by Joshua Tye as agent of the State of Georgia, pursuant to an order, said J. D. Compton then and there by leave of the Court presented and filed the following amendment to his said original petition, which amendment was as follows:

Before Hon. W. H. Thomas, Judge of City Court of Montgomery.

In re J. D. COMPTON, *Habeas Corpus.*

Your petitioner the said J. D. Compton amends his petition
20 for *habeas corpus* presented on the 29th day of January 1907, by adding the following:

Petitioner hereto attaches as part of this petition marked Exhibit "B" a copy of all papers presented to the Governor of the State of Alabama and on the consideration of which he issued his warrant. Said papers consist, first, of a communication of date January 28th, 1907, addressed "To His Excellency Jos. M. Terrell, Governor of Georgia" and signed Lowery Arnold, Solicitor Criminal Court of Atlanta, next, a statement purporting to be signed by J. W. Patterson and to have been sworn to before A. B. Harrison, N. P. stating in substance that he is the prosecutor of the said J. D. Compton and that the requisition is wanted for the sole purpose of furnishing the accused and not to collect the debt or money or to force the payment thereof; and lastly an affidavit purporting to be made by the said J. W. Patterson and to be sworn to before W. W. Troy, N. P. and certified to by Arnold Brayles or Brawles, Clerk of the Superior Court and ex officio Clerk of Criminal Court of Atlanta.

Petitioner is advised by his counsel and states that said proceedings disclosed by said papers were and are wholly insufficient to authorize the Governor of Alabama to issue his warrant for the arrest of your petitioner or to authorize the detention of your petitioner by the agent of the State of Georgia, in this,

First. That the said affidavit purporting to charge petitioner with the commission of an offense made by J. W. Patterson, it does not appear that said Patterson had any connection with the transaction mentioned or set forth in said affidavit or that he had personal knowledge of the truth of any of the statements made therein, said affidavit purporting to be made merely upon the information and belief of said Patterson.

Second. Said affidavit appears to have been made merely upon information and belief.

Third. It does not appear from said affidavit or from any of said affidavit or from any of said papers that said affidavit was made before a magistrate as is required to be done by Section 5278 of the revised statutes of the United States.

21 Fifth. It appears from said affidavit that it was made before a Notary Public before whom as a Magistrate the said prosecution was not to be heard and no other charge under oath appears to have been against petitioner.

Sixth. It does not appear from said affidavit that petitioner made any false representations to the persons from whom he bought said Live Stock.

Seventh. It does not appear it was any part of the duties of said C. H. Tribby as agent of the sellers of said property to make delivery of said property to the purchaser or to cause such delivery to be made.

Eighth. It does not appear from said papers copied in Exhibit B hereto attached that petitioner has committed any offense under the laws of the State of Georgia.

Ninth. It does not appear from said papers that Petitioner was guilty of the offense of being a common cheat and swindler under the laws of Georgia.

Tenth. The affidavit or complaint is void in that it fails to aver

that the maker of the affidavit had probable cause for believing the guilt of petitioner.

J. D. COMPTON.

Sworn to and subscribed before me this the 20th day of January, 1907.

WILEY HILL,
Notary Public.

"EXHIBIT B."

ATLANTA, GA., *Jan. 28th,* 1907.

To his Excellency, Jos. M. Terrell, Governor of Georgia:

At the January Term, 1907, J. W. Patterson swore out an accusation against J. D. Compton for the offense of being a common cheat and swindler. The said J. D. Compton has fled to the State of Alabama, where he is now a fugitive from justice; I therefore respectfully ask that your Excellency will grant a requisition on the Governor of Alabama for the extradition of the said J. D. Compton in order that he may be brought back to the State of Georgia to
22 stand his trial according to law, for which purpose alone he is wanted. The name of Joshua Tye is suggested as a suitable person to act as agent for the State of Georgia to receive and convey back to the State said fugitive to stand his trial as aforesaid, two certified copies of the bill of indictment are herewith forwarded as required by law.

Respectfully,

LOWERY ARNOLD,
Solicitor Criminal Court of Atlanta.

STATE OF GEORGIA, EXECUTIVE DEPARTMENT,
ATLANTA, GEORGIA, *Fulton County:*

In person appeared before me the undersigned, J. W. Patterson, who being duly sworn upon oath says that he is the prosecutor in the case of the State *vs.* J. D. Compton, charged with being a common cheat and swindler, and for whom application for requisition is made, that the requisition is wanted for the sole purpose of punishing the accused, and not in any way to collect a debt or money, or to force the payment thereof.

J. W. PATTERSON.

Sworn to and subscribed before me this 28th day of Jan. 1907.
[SEAL.]
A. B. HARRISON,
Notary Public, Fulton Co., Ga.

STATE OF GEORGIA, *Fulton County:*

Came in person before me J. W. Patterson, who, being duly sworn deposes and says on oath that from the best of his knowledge and belief J. D. Compton is guilty of the offense of misdemeanor in this: That the said J. D. Compton in said County of Fulton, on the 15th

day of January, 1907, did make false representations as to his own correspondence and connections and did thereby obtain a credit and did cheat and defraud C. H. Tribby, S. R. Bratton, S. Pack & Company, and the Cranford Horse and Mule Company, out of the sum of Thirty-seven hundred and fifty ($3750.00) Dollars, same being of the value of $3750.00 in the following manner, towit:

23 On the 15th day of January, 1907, the said J. D. Compton came to the place of business of the Miller Union Stock Yards in Fulton County, Georgia, for the purpose of purchasing stock. At said stockyards the said C. H. Tribby, R. Bratton, S. Pack & Company and the Cranford Horse and Mule Company, had stock, consisting of horses and mules. The said Compton agreed to purchase a horse from said C. H. Tribby for the price of One Hundred and Fifty ($150.00) Dollars. He also agreed to purchase nine mules of the value of $1075.00 belonging to the said S. R. Bratton. He also agreed to purchase from S. Pack & Co. eight mules of the value of $1265.00 and also at the same time and place, agreed to purchase from the Cranford Horse and Mule Company, seven mules of the value of $1260.00 making a total of twenty four (24) mules and one horse, aggregating the value agreed on between the said J. D. Compton and the other parties above named of $3750.00.

Pay J. Clyatt was the cashier of the said Miller Union Stock Yards and in payment for said stock above mentioned, the said J. D. Compton tendered to the said Pat J. Clyatt, who is cashier of the Stock-yards, and was acting as the agent of said C. H. Tribby, S. R. Bratton, S. Pack & Co. and the Cranford Horse & Mule Co. a draft for said amount, towit $3750.00 drawn on the Fourth National Bank of Montgomery, Alabama, and signed J. W. Chastain & Son, J. D. Compton." When tendering this draft, the said J. D. Compton stated that he and Chastain were partners, and that he had a right to sign the name of J. W. Chastain & Son.

The said Pat J. Clyatt, who was acting as above stated agent for the said C. H. Tribby, S. R. Bratton, S. Pack & Co. and the Cranford Horse & Mule Co. relying upon and believing the said statements of the said J. D. Compton that he was a partner of J. W. Chastain and that said J. D. Compton had a right to sign the name of J. W. Chastain and Son, accepted said draft for said $3750.00 in the payment of the said mules and horses above described and allowed the said J. D. Compton to take and ship said stock away from the place of business of the Miller Stock Union Yards. The said J. W. Chastain & Son were patrons of the said Miller Stock yards and of which concern Pat J. Clyatt was cashier and did

24 a considerable business with them. The said statements of the said J. D. Compton that he was a partner of J. W. Chastain and that he had a right to sign the name of J. W. Chastain & Son to said draft, were false and fraudulent and were made for the purpose of deceiving the said Pat J. Clyatt, who, relying upon and believing the same, accepted the said draft and allowed the said J. D. Compton to take and ship said stock away as above stated. Said draft in the regular course of business was returned unpaid and remains unpaid. The said J. D. Compton had no authority to sign

the name of J. W. Chastain & Son and was not a partner of J. W. Chastain and had no right to sign the name of J. W. Chastain and Son. By making the statements that he had the right to sign the name of J. W. Chastain & Son and that he was a partner of J. W. Chastain, the said J. D. Compton imposed upon the credulity of the said Pat J. Clyatt and did obtain a credit and did thereby fraudulently get into possession of the horse and mules above stated same being of the value of $375.00 contrary to law.

J. W. PATTERSON.

Sworn to and subscribed before me the 29th day of Jan. 1907.

W. W. TROY,
N. P. of Fulton Co. Ga.

STATE OF GEORGIA, *County of Fulton:*

I, Arnold Brayles, Clerk Superior Court, ex officio Clerk Criminal Court of Atlanta, do hereby certify that the foregoing is a true copy of the affidavit of J. W. Patterson, accusing J. D. Compton of the offense of misdemeanor. The original affidavit being on file in this office.

Witness my hand and seal of Court, January 29th, 1907.

ARNOLD BRAYLES,
Clerk Superior Court, Ex Officio
Clerk Criminal Court of Atlanta.

Thereupon said S. S. Belser as Sheriff of Montgomery County and said Joshua Tye as agent of the State of Georgia presented and filed the following return to said original and amended petition, towit:

25 THE STATE OF ALABAMA, *Montgomery County:*

In the Matter of Application of J. D. COMPTON for Writ of *Habeas Corpus.*

To the Hon. W. H. Thomas, Associate Judge of the City Court of Montgomery, Alabama:

Now come Joshua Tye and also S. S. Belser, as Sheriff of Montgomery County, Alabama, and for answer to the petition as amended in said cause as also to the writ served upon them in this cause, separately and severally say:

First. That said S. S. Belser, as Sheriff of said County, arrested and delivered into the custody of the said Joshua Tye, and the said Joshua Tye now holds the said petitioner, J. D. Compton, under and by virtue of an executive warrant issued by the Governor of the State of Alabama, on the 29th day of January 1907, ordering the arrest of the said petitioner, the said J. D. Compton, and his return to the State of Georgia, which said warrant was issued upon the demand of the Governor of the State of Georgia, upon an affidavit, charging the petitioner with the commission of a crime in the State of Georgia, on the 15th day of January, 1907, the said warrant

so issued by the Governor of Alabama is hereto attached, marked Exhibit "A" and made a part hereof; that the said Joshua Tye is the person appointed and commissioned as the agent on the part of the State of Georgia, for the purpose of bringing the said J. D. Compton to the said State of Georgia. The original of said commission so appointed the said Joshua Tye is hereto attached, marked Exhibit C and made a part hereof.

Wherefore the said Joshua Tye and the said S. S. Belser as aforesaid, severally, say that the said J. D. Compton is not unlawfully restrained of his liberty by the said Joshua Tye.

JOSHUA TYE.
S. S. BELSER,
Sheriff Montgomery Co.

Subscribed and sworn to before me, this 30th day of January 1907.

W. H. THOMAS,
Associate Judge.

26 "EXHIBIT A."

In the Name and by the Authority of the State of Alabama.

I, B. B. Comer, Governor of the State to Any Sheriff, Coroner, Constable or other officer authorized by law to make arrests, sends Greeting:

Whereas, His Excellency, J. M. Terrell, Governor of the State of Georgia, by requisition dated the 28th day of January 1907, has demanded of me, as Governor of the State of Alabama, the surrender of J. D. Compton who, it appears, is charged by affidavit in the County of Fulton in said State, with the crime of being a common cheat and swindler, (a duly certified copy of which affidavit accompanies said requisition) and it appearing that said J. D. Compton has fled from justice in said State and taken refuge in the State of Alabama.

Now therefore, I, B. B. Comer, Governor of the State of Alabama, in obedience to the Constitution and Laws of the United States and the Laws of the State of Alabama, do command you to arrest the said J. D. Compton if he be found within the limits of this State, and to deliver him into the custody of Joshua Tye the only authorized agent of the State of Georgia.

And of the execution of this warrant you will make due return to me.

In testimony whereof, I have hereunto set my hand and caused the Great Seal of the State to be affixed at the Capitol, in the City of Montgomery, this 29th day of January in the year of our Lord, One Thousand Nine Hundred and seven and in the One Hundred and 31st year of American Independence.

B. B. COMER.
Governor of Alabama.

(Alabama Great Seal.)

FRANK N. JULIAN,
Secretary of State.

Executed by arresting the defendant and delivering him
Joshua Tye agent of the State of Georgia, This Jan'y 29th 1907.
S. S. BELSER, *Sheriff*,
By G. S. WILSON, *D. S.*

27 "EXHIBIT B."

EXECUTIVE DEPARTMENT.

THE STATE OF GEORGIA:

The Governor of the State of Georgia to His Excellency, the Gove
nor of Alabama:

Whereas, It appears by the annexed copy affidavit which is hereb
certified to be authentic, that J. D. Compton stands charged wi
the crime of being a common cheat and swindler committed in th
County of Fulton, in this State, and it has been represented to m
that he has fled from the justice of this State, and has taken refu
in the State of Alabama.

Now, therefore, pursuant to the provisions of the Constitutio
and Laws of the United States, in such case made and provided, I d
hereby request that the said J. D. Compton be apprehended an
delivered to Joshua Tye who is hereby authorized to receive an
convey him to the State of Georgia, there to be dealt with accordin
to law.

In testimony whereof, I have hereunto set my hand, and caus
the Great Seal of State to be affixed, at the Capitol, in the City
Atlanta, this 28th day of January, in the year of our Lord, On
Thousand Nine Hundred and Seven.

J. M. TERRELL,
Governor.

By the Governor,
PHILLIP COOK,
Secretary of State.

"EXHIBIT B1."

ATLANTA, GA., *Jan. 28th*, 1907.

To His Excellency, Jos. M. Terrell, Governor of Georgia:

At the January Term, 1907, J. W. Patterson swore out an accus
tion against J. D. Compton for the offense of being a common che
and swindler. The said J. D. Compton has fled to the State
Alabama, where he now is a fugitive from justice; I therefore r
spectfully ask that your Excellency will grant a requisitio
28 on the Governor of Alabama for the extradition of the sa
J. D. Compton in order that he may be brought back to th
State of Georgia to stand his trial according to law, for which pu
pose alone he is wanted. The name of Joshua Tye is suggested as
suitable person to act as agent for the State of Georgia to receiv
and convey back to the State said fugitive to stand his trial as afor

said, two certified copies of the bill of indictment are herewith forwarded as required by law.

Respectfully,

LOWERY ARNOLD,
Solicitor, Criminal Court of Atlanta.

"EXHIBIT B2."

STATE OF GEORGIA,
EXECUTIVE DEPARTMENT.
Atlanta.

GEORGIA, *Fulton County:*

In person appeared before me the undersigned, J. W. Patterson, who being duly sworn upon oath says that he is the prosecutor in the case of the State *vs.* J. D. Compton, charged with being a common cheat and swindler, and for whom application for requisition is made, that the requisition is wanted for the sole purpose of punishing the accused, and not in any way to collect a debt or money, or to force the payment thereof.

J. W. PATTERSON.

Sworn to and subscribed before me this 28th day of Jan. 1907.
[NOTARY SEAL.] A. B. HARRISON,
Notary Public, Fulton Co., Ga.

STATE OF GEORGIA, *Fulton County:*

Came in person before me, J. W. Patterson, who, being duly sworn deposes and says on oath that from the best of his knowledge and belief J. D. Compton is guilty of the offense of misdemeanor in this: That the said J. D. Compton in said County of Fulton,
29 on the 15th day of January, 1907, did make false representations as to his own correspondence and connections and did thereby obtain a credit and did cheat and defraud C. H. Tribby, S. R. Bratton, S. Pack & Company, and the Cranford Horse and Mule Company, out of the sum of Thirty Seven Hundred and Fifty ($3750.00) Dollars, same being of the value of $3750.00 in the following manner, to-wit:

On the 15th day of January 1907, the said J. D. Compton came to the place of business of the Miller Union Stock Yards in Fulton County, Georgia, for the purpose of purchasing stock. At said stock yards, the said C. H. Tribby, S. R. Bratton, S. Pack & Company and the Cranford Horse and Mule Company, had stock, consisting of horses and mules. The said Compton agreed to purchase a horse from said C. H. Tribby for the price of One Hundred and fifty ($150.00) Dollars. He also agreed to purchase nine mules of the value of $1075.00 belonging to the said S. R. Bratton. He also agreed to purchase from S. Pack and Co. eight mules of the value of $1265.00 and also at the same time and place, agreed to purchase from the Cranford Horse and Mule Co. seven mules of the value of $1260.00 making a total of twenty four (24) mules and one horse,

aggregating the value agreed on between the said J. D. Compton and the other parties above named of $3750.00.

Pat J. Clyatt was the cashier of the said Miller Union Stock Yards and in payment for said stock above mentioned, the said J. D. Compton tendered to the said Pat. J. Clyatt, who is cashier for said stock yards, and was acting as agent for the said C. H. Tribby, S. R. Bratton, S. Pack & Co. and the Cranford Horse and Mule Co. a draft for said amount, towit, $3750.00 drawn on the Fourth National Bank of Montgomery, Alabama, and signed "J. W. Chastain & Son, J. D. Compton." When tendering this draft, the said J. D. Compton stated that he and J. W. Chastain were partners, and that he had a right to sign the name of J. W. Chastain & Son.

The said Pat. J. Clyatt, who was acting as above states as agent for the said C. H. Tribby, S. R. Bratton, S. Pack & Co. and the Cranford Horse and Mule Co., relying upon and believing the said statements of the said J. D. Compton that he was a partner of
30 J. W. Chastain, and that the said J. D. Compton had a right to sign the name of J. W. Chastain and Son, accepted said draft for said $3750.00 in the payment of the said mules and horses above described and allowed the said J. D. Compton to take and ship said stock away from the place of business of the Miller Stock Union Yards. The said J. W. Chastain & Son were patrons of the said Miller Union Stock Yards and of which concern the said Pat J. Clyatt was cashier and did a considerable business with them. The said statements of the said J. D. Compton that he was a partner of J. W. Chastain & Son and that he had a right to sign the name of J. W. Chastain & Son to said draft, were false and fraudulent and were made for the purpose of deceiving the said Pat J. Clyatt who was acting in the capacity aforesaid of agent, and the said statements did deceive the said Pat. J. Clyatt who, relying upon and believing the same, accepted the said draft and allowed the said J. D. Compton to take and ship said stock away as above stated. Said draft in the regular course of business was returned unpaid and remains unpaid. The said J. D. Compton had no authority to sign the name of J. W. Chastain & Son and was not a partner of J. W. Chastain the said J. D. Compton imposed on the credulity of the said Pat. J. Clyatt and did obtain a credit and did thereby fraudulently get into possession of the horse and mules above stated same being of the value of $3750.00 contrary to law.

J. W. PATTERSON.

Sworn to and subscribed before me this 29th day of Jan., 1907.

W. W. TROY,
N. P. of Fulton Co., Ga.

STATE OF GEORGIA, *County of Fulton:*

I, Arnold Broyles, Clerk Superior Court, *ex officio* Clerk Criminal Court of Atlanta, do hereby certify that the foregoing is a true copy of the affidavit of J. W. Patterson accusing J. D. Compton of the

offense of misdemeanor. The original affidavit being on file in this office. Witness my hand and seal January 28, 1907.

[Superior Court Seal, Fulton County, Ga.]

31 ARNOLD BROYLES,
Clerk Superior Court and ex-Officio
Clerk Criminal Court of Atlanta.

The foregoing return of said Belser, Sheriff, and Tye, agent of the State of Georgia, was endorsed "Filed in office, this January 20th, 1907, Wm. H. Thomas, Associate Judge."

The foregoing warrant of the Governor of Alabama was under the Great Seal of State, of Alabama.

Attached to the foregoing requisition of the Governor of Georgia and made a part of the return of said Belser and Tye, marked Exhibit "B," were the certificate of Lowery Arnold, Solicitor of the Criminal Court of Atlanta, on blank form provided for that purpose, here marked Exhibit "B1" the affidavit of J. W. Patterson, before A. B. Harrison, a Notary Public, here marked "Exhibit "2," under the seal of said Notary, and the affidavit of J. W. Patterson before W. W. Tracy, N. P. for Fulton County Georgia, here marked Exhibit "B3," together with the certificate of Arnold Broyles, Clerk of the Superior Court and *ex officio* Clerk of the Criminal Court of Atlanta, affixed to the last aforesaid affidavit, under his official seal, all of which were bound together by tape as one document, and under the Great Seal of State of Georgia and were the original papers transmitted by the Governor of Georgia to the Governor of Alabama. The requisition bore the Great Seal of the State of Georgia.

EXECUTIVE DEPARTMENT,
THE STATE OF GEORGIA.

The Governor of the State of Georgia, to all whom these presents shall come, Greeting:

Whereas, it has been officially represented to me that J. D. Compton stands charged by affidavit in Fulton County, State of Georgia, with the offense of being a common cheat and swindler.

And Whereas, I have made application to His Excellency, the Governor of the State of Alabama for the delivery of the said J. D. Compton as fugitive from justice and have appointed, and by these presents, I do hereby appoint and commission Joshua Tye,
32 agent, on the part of this State for the purpose of bringing the said J. D. Compton to this State, having jurisdiction of his crime aforesaid, whenever the Governor of the State of Alabama shall cause him to be delivered up agreeably to the requisition aforesaid.

These are, Therefore, To request and require all persons to permit the said Joshua Tye to receive and secure the said J. D. Compton, and bring him unmolested into this State, having jurisdiction of his crime.

Given under my hand and the seal of the Executive Department, at the Capitol in the City of Atlanta, the 28th day of January, in

the year of our Lord, One Thousand and Nine Hundred and Seven, and of the Independence of the United States of America, the One Hundred and thirty first.

[SEAL.] J. M. TERRELL, *Governor.*

By the Governor,

WESLEY SHOPSHIRE,
Secretary Executive Department.

The foregoing (Exhibit C) was under the Great Seal of State of Georgia.

Thereupon said J. D. Compton demurred to the return so filed by S. S. Belser as Sheriff of Montgomery County, and by Joshua Tye as agent of the State of Georgia, said demurrers being as follows: Towit:

Before Hon. W. H. Thomas, Judge of City Court.

STATE OF ALABAMA
vs.
J. D. COMPTON.

Habeas Corpus Proceedings.

Comes the said J. D. Compton and demurs to the return made by S. S. Belser as Sheriff of Montgomery County and by Joshua Tye as Agent of the State of Georgia in the above proceedings, showing upon what authority they hold in custody the said J. D. Compton and assigns as grounds of demurrer thereto the following:

1st. That the affidavit purporting to be made by J. W. Patterson fail- to show that said J. W. Patterson had any connection with the transactions mentioned or set forth in said affidavit or that he had personal knowledge of the truth of any of the statements
33 made therein. said affidavit purporting to be made merely to the best of his knowledge and belief.

2nd. Said affidavit of said J. W. Patterson appears to have been made merely upon information and belief.

3rd. It does not appear from said affidavit or from any affidavit or from any of said papers attached to said return that said affidavit was made before a magistrate as is required to be done by Section 5278 of the Revised Statute of the United States.

5th. It appears from said affidavit that it was made before a Notary Public before whom as a magistrate the said prosecution was not to be heard and no other charge under oath appears to have been made against the petitioner J. D. Compton.

6th. It does not appear from said affidavit that petitioner made any false representations to the persons from whom he bought said live stock.

7th. It does not appear that it was any part of the duties of said C. H. Tribby as the agent of the sellers of said property to make

delivery of said property to the purchaser or to cause such delivery to be made.

8th. It does not appear from said return or from the papers attached to said return that petitioner has committed any offense under the laws of the State of Georgia.

9th. It does not appear from said return or from the papers attached to said return that petitioner was guilty of the offense of being a common cheat and swindler under the laws of Georgia.

10th. It appears from said papers attached to said return that the Governor of Alabama had no authority to issue his warrant in that no indictment found on affidavit charging a criminal offense such as is required by Section 5278 of the Revised Statute of the United States existed.

11th. The warrant of the Governor of Alabama for the arrest of said J. D. Compton was illegal and void in that it was not supported by an affidavit showing probable cause.

12th. That it did not appear from said return or from the said exhibits attached to said return that any criminal prosecu-
34 tion was pending before any Court of magistrate.

13th. That it did appear from said exhibit attached to said return that the only affidavit made in the State of Georgia was made before a Notary Public and it does not appear that said Notary Public was a magistrate under the laws of Georgia.

14th. That the proceedings had in Georgia as shown by said return and the exhibits to said return did not conform to the requirements of Sec. L. 5278 of the Revised Statutes of the United States in that there was not produced to the Governor of the State of Alabama a copy of an indictment found or an affidavit made before a magistrate of any State or territory charging the person demanded with having committed treason, felony or other crime.

J. M. CHILTON,
HILL, HILL & WHITING,
Attorneys for J. D. Compton.

Upon consideration of said demurrers, it was ordered and adjudged by said Hon. W. H. Thomas, as Judge aforesaid that the same be overruled. And the said Judge did make the following order, "It is ordered and adjudged that the said demurrer be and is overruled." And to this action and ruling of the Judge said J. D. Compton then and there duly excepted.

Thereupon the State of Alabama offered in evidence the said return and the papers attached to the said return.

Said J. D. Compton objected separately to the affidavit of J. W. Patterson attached to said return on the ground,

1st. That it did not appear to have been sworn to before a magistrate.

2nd. Because it did not appear that any cause was pending before a magistrate.

3rd. Because it appeared that said affidavit was insufficient in that it was predicated upon information and belief.

4th. It did not appear from said affidavit that it was . . by any person having personal knowledge of the facts deposed to.

5th. Because said affidavit did not charge the commission of a criminal offense.

6th. Because said affidavit was sworn to, to the best of affi-
35 ant's knowledge and belief.

7th. Said affidavit did not show probable cause. The presiding Judge overruled each of said objections and admitted affidavit in evidence and to this ruling of the Judge the said J. D. Compton then and there duly excepted.

Said petitioner J. D. Compton also objected to the admission in evidence of the letter purporting to be signed by one Arnold and attached to said return. On the ground, first, that the same was irrelevant. Second, that it was incompetent. The Court overruled said objections and admitted said letter in evidence and to this ruling and action of the Presiding Judge the petitioner, said J. D. Compton duly excepted.

Said J. D. Compton objected to the admission in evidence of the warrant of arrest issued by the Governor of Alabama on the following grounds, first, said warrant was not supported by affidavit showing probable cause.

2nd. The affidavit of J. W. Patterson upon which said warrant was predicated was insufficient to authorize said warrant in that first, it was not sworn to before a magistrate.

3rd. It was sworn to to the best of affiant's knowledge and belief.

4th. Said affidavit was made on information and belief.

5th. Said affidavit showed no pending proceedings before a Magistrate.

6th. Said affidavit charged no offense.

7th. Said affidavit was sworn to before a Notary Public.

8th. Said affidavit was sworn to before a Notary Public and was not made returnable before any Court.

9th. It did not appear from said affidavit that J. W. Patterson who professed to swear to the same had any personal knowledge of the fact stated therein. The Judge overruled each of said objections and admitted said warrant of arrest in evidence, to this ruling and action of the Judge presiding the said J. D. Compton then and there duly excepted.

The State then introduced in evidence an act purporting to be an act of the General Assembly of the State of Georgia establishing the Criminal Court of Atlanta, beginning on page 935 of the Session Acts of the Georgia Legislature, of 1890-91, Vol. 2,
36 as follows, towit:

Establishing the Criminal Court of Atlanta, etc.

No. 278.

An Act to establish the Criminal Court of Atlanta and in pursuance thereof to amend an Act Establishing City Court of Atlanta, passed December 15th, 1871, and Acts amendatory thereof, and for other purposes.

Be it enacted by the General Assembly of the State of Georgia and it is hereby enacted by authority of the same.

SECTION 1. That immediately upon the passage of this Act, there be established in the County of Fulton, a Court to be known as the Criminal Court of Atlanta, and that said Court have jurisdiction over the County of Fulton of the following matters, viz:—all crimes and offenses which by the Constitution of the State, are not exclusively cognizable in the Superior Courts thereof.

SECTION II. Provides for appointment of Judge.

SECTION III. Provides for salary of Judge.

SECTION IV. That the Clerk and Sheriff and their deputies of the Superior Court of Fulton County shall be *ex officio* clerk, Sheriff and deputies, of the Criminal Court of Atlanta, and shall receive the same fees as are allowed by law to such officers in the Superior Court of this State. That, in addition to these officers there shall be a special bailiff of said Court, whose duty it shall be to assist the solicitor in the preparation of all cases and to discharge the regular duties of a bailiff, and whose salary is to be fixed by the County Commissioners at any sum they may see proper; said bailiff to be appointed by each solicitor of said Court, under the approval of the judge thereof.

SEC. V. That the Judge of said Court shall have the power to issue writs of *habeas corpus* and to hear and dispose of the same in all cases arising or accruing within the limits of the County of Fulton, and in the same way and with the same power as the judge of the Superior Court, and to discharge, admit to bail, or remand to jail any prisoner, according to the laws of the land; but nothing herein contained shall be so construed as to diminish or affect the powers of the Judge of the Superior Courts of Atlanta Circuit, or the Judge of the City Courts of Atlanta on the subject of writs of *habeas corpus*.

37

SEC. VI. Said Courts shall hold monthly terms, to be designated by the name of the Month on which each term begins, and said Court shall also hold such adjourned terms as the judge in his discretion may designate.

SEC. VII. Said Court as a Court of record is empowered to compel production of books, papers or other evidence, in the possession of any party, to enforce obedience to its orders and process of attachment for contempt, and to have all other powers necessary to carry into effect its orders, judgment and sentences, and which are incidental to Courts. The general law of the State in regard to

witnesses and their attendance, subpœnas, and all other laws pertaining to the procedure, practice and power of the Superior Courts of this State, in so far as applicable to the Criminal Court of Atlanta, are hereby conferred on said Criminal Court, including the power to punish for contempts, except that the clerk shall make the *scire facias* on all forfeited bonds, recognizances or other obligations returnable to the third term of said Court. Also except that the defendant shall not be discharged after putting his demand for a trial on the minutes until the next term after the expiration of six months from the date of his demand. The Judge and other officers of said Court shall have the power to administer all oaths pertaining to their respective offices as fully as the judge and corresponding officers of the Superior Court are authorized to do. Said judge is empowered to take affidavits and attest other papers in like manner as the same may be taken and attested by any justice of the peace in this State.

SEC. VIII. That all the duties and liabilities attached to clerks of the Superior Court, Sheriffs of the Counties and other officers of said Superior Courts shall in like manner be attached to such clerks, Sheriffs and other officers of said Criminal Court of Atlanta, and the judge of said Criminal Court has equal authority over said officials with the judges of the Superior Courts of the State.

SEC. IX. There shall be a solicitor of said Criminal Court
38 whose duty it is to represent the State in all prosecutions pending therein, and in all matters in which it is the duty of the solicitors-general of the Superior Courts of said State to represent said State, who shall be entitled to the same fees as the solicitors-general of said State. He shall have the same fees for warrants issued by the said Court and accusations therein as the solicitor-general of the Superior Courts have for bench warrants, indictments and presentments; and for each person prosecuted to trial on plea of guilty in said Court, on indictment or presentment by the Grand Jury sent down from the Superior Court, he shall have the same fees as the solicitor-general of said Superior Court. Whenever the law in relation to the fees of solicitors-general of the Superior Courts is changed, the change shall apply to the fees of the solicitor of this Court. Said solicitor shall be appointed by the Governor by and with the advice and consent of the Senate, and commissioned and sworn as solicitors-general of the Superior Courts are commissioned and sworn, and his costs shall be paid out of the fines and forfeitures fund in the same manner as costs of the Solicitors-general of the Superior Courts are paid.

SEC. X. Provides that act shall not affect either the present incumbent of the office of solicitor but that the incumbent is transferred to the criminal court of Atlanta and the present appointee should continue for four years after the 23rd of February 1892.

SEC. XI. That Criminal prosecutions in said Court may be instituted by written information or accusation, plainly and distinctly setting forth the offense charged, containing the name of the prosecutor and signed by the solicitor-general, and founded on affidavit. The Judge of said Court may upon affidavit being made that a

rime has been committed, issue his warrant for the arrest of said party. If said party after his arrest under said warrant from said udge, does not desire a committal trial, then he shall give bond to ppear at said criminal Court for trial or be committed to jail. If, however, said party should desire a committal trial, then he 39 shall be taken before some proper officer other than the judge of said court for that purpose. This power in the judge of aid Court to issue warrants for the arrest of offenders is not inended to deny to other officers of said State the right to issue varrants for and bind over offenders to said Criminal Court. The udge of said Court shall have the power in vacation to accept pleas f guilty and pass sentence on those pleading guilty. The proeedings after information or accusation, shall conform to the rules governing like proceedings in the Superior Courts, except that the ury in said Court, shall consist of Five, to be stricken alternately y the defendant and State from a panel of twelve. The defendant hall be entitled to four (4) strikes and the State three (3) and he five remaining jurors shall compose the jury.

SEC. XII. Provides for selection of jurors.

SEC. XIII. Provides that every defendant may carry his case diectly to the Supreme Court by writ of error and for bills of exceptions.

SEC. XIV. Provides how moneys arising from fines and forfeitures shall be paid out.

SEC. XV. That the jurisdiction given the City Court of Atlanta, y the Act of December 15th, 1870, and Act amendatory thereof, to ry all offenses less than felony be, and the same is, hereby withdrawn, and said jurisdiction is conferred on the criminal cases in aid City of Atlanta, not in conflict with the provisions of this Act, re hereby withdrawn from said City Court of Atlanta, and made pplicable to the criminal Court of Atlanta.

SEC. XVI. Provides for transfer to said Court of All causes pendng under indictments of presentments for misdemeanors in Fulton Court.

— XVII. Provides that Judge of the City Court of Atlanta, is nade competent to preside in the Criminal Court in Atlanta whenever agreed upon by the judges of both Court- and when either judge s disqualified the other shall sit in his place.

SEC. XVIII. Provides that under the foregoing Section the two udges may assist each other by transfer when necessary and for the empannelling of juries.

40 SEC. XIX. That all laws or parts of laws in conflict with this Act be, and the same are, hereby repealed.

Approved September 6th, 1891.

On the first leaf of said book containing said Act the following ppeared printed:

"Acts and Resolutions of the General Assembly of the State of Georgia, 1890-91, Vol. II. Compiled and Published by authority. Atlanta, Ga., George W. Harrison, State Printer (Franklin Publishng House) 1892".

The petitioner J. D. Compton objected to the introduction of said Act of the Legislature of Georgia on the following grounds, towit: First. Said Act was incompetent, and second, on the ground that said Act had not been sufficiently proved or authenticated. The Court overruled said objection and admitted said act in evidence and to this ruling and action of the judge presiding, J. D. Compton then and there duly excepted.

The attorneys representing the State of Alabama and said J. D. Compton respectively filed in said cause the following agreement:

Agreement of Counsel.

STATE OF ALABAMA
vs.
J. D. COMPTON.

It is agreed that the foregoing abstract of the Act creating the Criminal Court of Atlanta may be set out in the bill of exceptions in lieu of the entire act.

STEINER, CRUM & WEIL,
Attorneys for State.
J. M. CHILTON,
HILL, HILL & WHITING,
Attorneys for Compton.

The State of Alabama then offered in evidence Sections 1275, 658, 670, 883, 884, of the Code of Georgia, on the first page of which book the following appeared:

THE CODE
OF
STATE OF GEORGIA.

Adopted December 15th, 1895.

41 Prepared by John L. Hopkins, Clifford Anderson and Joseph R. Lamar.

Vol. III. Atlanta Georgia.

The Foot and Davies Company
Printers and Binders.

1896.

On the opposite page were the words: Entered according to Act of Congress in the year 1896 by the State of Georgia in the office of the Librarian of Congress at Washington". Said book was bound in sheep and contained sections from one to 1275, all relating to criminal law and procedure.

Said J. D. Compton objected to the admission in evidence of said book on the following ground: First, said volume had not been sufficiently proved. Second, said Sections of the Code of Georgia were incompetent and irrelevant to this proceeding. The Court overruled each of said objections and admitted said Sections of said *court* in evidence and to this ruling and action of the Judge presiding J. C. Compton then duly excepted. Said Sections 658, 670, 884 and 1275 of the Code of Georgia, so introduced in evidence were as follows, towit:

670 (4595). *Other offenses of like kind.*—Any person using any deceitful means or artful practice, other than those which are mentioned in this Code, by which an individual, or the public, is defrauded and cheated, shall be punished as for a misdemeanor.

883 (4714). *What affidavit and warrant must state.*—An affidavit made, or warrant issued, for the arrest of an offender against the penal laws, shall State as nearly as practicable the following facts, towit: The offense, the County in which the same was committed, and the time when committed, and when the offense charged is larceny, the ownership of the property alleged to have been stolen, or the person from whom possession it was taken, shall as far as practicable be stated in the affidavit and warrant.

884 (4715). *Form of affidavit.*—An affidavit substantially complying with the following form, shall, in all cases, be sufficient:

GEORGIA, —— *County:*

Personally came A. B. who on oath saith that, to the best of his knowledge and belief, C. D. did, on the — day of — in the year —, in the county aforesaid, commit the offense of —— and this
42 deponent makes this affidavit that a warrant may issue for his arrest.

A. B.

Sworn to and subscribed before me, this the — day of —, 1866.

——— ———,
J. P.

1275. *Regulations for obtaining requisitions.*—In addition to any rules that are now or may hereafter be adopted by the Governor, the following rules shall be observed as a condition precedent to obtain a requisition by him for the extradition of any fugitive from the justice of this State.

1. The application for a requisition as aforesaid must be made to the Governor of this State by a Solicitor general, or a solicitor of a county Court, Judge of a City or County Court, or the Mayor of any City or town of this State, and must show the full name of the fugitive for whom extradition is asked, the crime charged, the State or Territory to which he has fled, the full name of the person suggested to act as Agent for this State to receive and convey said fugitive to this State, said agent is no case to be the prosecutor, but the Governor may, in his discretion appoint some other suitable person as agent of this State to receive and convey the prisoner. The application must

also show that the ends of public justice require that the fugitive be brought back to this State for trial, and that the requisition is not wanted for the purpose of enforcing the collection of a debt, or for any private purpose whatever, but solely for the purpose of a criminal prosecution as provided by law.

2. The application must be accompanied by the affidavit of the prosecutor, if any, stating that the requisition is wanted for the sole purpose of punishing the accused, and not in any way to collect a debt or money, or to enforce the payment thereof.

3. If the fugitive has been indicted, two certified copies of the indictment or presentment must be forwarded to the Governor with the application.

4. If no indictment has been preferred, and an affidavit is the basis of the requisition, it must describe the crime committed, with all the particularity required in an indictment, and two certified copies of the affidavit must accompany the petition for the
43 requisition.

SEC. 658 (4587). *Fraudulently obtaining credit.*—If any person by false representation of his own responsibility, wealth, or mercantile correspondence and connections, shall obtain a credit, and thereby defraud any person of any money, or other valuable thing, or shall cause or procure others to report falsely of his honesty, respectability, wealth, or mercantile character, and by thus imposing on the credulity of any person, shall obtain a credit and thereby fraudulently get into possession of goods, or other valuable thing, he shall be deemed a cheat and swindler, and shall be punished as for a misdemeanor and he shall be compelled by the sentence of the court to restore to the party injured the property so fraudulently obtained if it can be done.

State of Alabama then introduced a case in a volume purporting to be Vol. 91 of the Reports of the Supreme Court of Georgia beginning at Page 207.

Said J. D. Compton objected to the admission in evidence of said case on the ground, first, that it was irrelevant, second, it was incompetent.

The attorneys for the respective parties filed in said cause, the following agreement:

"It is agreed that the opinion and report of the case in Vol. 91 of the reports of the Supreme Court of Georgia, above mentioned, may be referred to in the bound volume, by the Supreme Court of Alabama, for the purpose of this appeal, the same in all respects as though set out at length herein. This agreement being made for the purpose of avoiding costs of transcribing same here.

STEINER, CRUM & WEIL,
For the State.

J. M. CHILTON,
HILL, HILL & WHITING,
For the Petitioner.

The State of Alabama then introduced Shepard Bryan, Esq., who testified that he was a licensed Attorney in the Courts of Georgia and had been practicing in said Courts for a number of years and was

familiar with its decisions and knew its official volumes.
44 That the volume of Session Acts containing the creation and organization of the Criminal Code of Atlanta were the acts of the Legislature of Georgia and that the volume purporting to be the Code of Georgia and contained the Sections offered in evidence as aforesaid was the Code of Georgia and that said decision reported in the 91st Georgia Report of its Supreme Court decision was a decision of the Supreme Court of Georgia. Said J. D. Compton objected to the admission of the evidence in respect to the genuineness and official character of said volumes and of said decisions on the following grounds, first, said evidence was incompetent. Second, said evidence was illegal.

Said J. D. Compton then introduced in evidence Section 882 of the Code of Georgia from the same volume that had been introduced in evidence by the State of Alabama aforesaid which Section read as follows, towit:

SEC. 882 (4713). *Who may issue warrants.*—Any judge of a superior Court, City, or county Court, or justice or any corporation officer clothed by law with the powers of a justice, may issue his warrant for the arrest of any offender against the penal laws based on his own knowledge or the information of others given to him under oath.

Said J. D. Compton then proposed to introduce evidence showing the following facts that Mr. Compton had before drawing the check in Atlanta described in the extradition proceedings been buying live stock and signing the name of J. W. Chastain & Son to checks in payment for the same, which were honored by said Chastain & Son. That the check described in said extradition proceedings was drawn on the Fourth National Bank and the name of J. W. Chastain & Son was signed therein to by J. D. Compton. That said Compton prior to drawing said check had an arrangement with J. W. Chastain of said firm by which said Chastain was to advance him money at one per cent. per month. That he Compton had been to St. Louis, drawn a draft thereon — said Chastain & Son for twenty odd hundred dollars which Chastain had paid; that he had drawn another check at Petrey, Ala. on the Fourth National Bank to which he signed the
45 name of Chastain & Son, which was paid by the direction of said Chastain. That after Mr. Compton had drawn said draft in Atlanta he returned to his home in the City of Montgomery, Ala. and proceeded to dispose of the horses and mules he had purchased and paid for with said draft and as fast as he disposed of the same he turned the money to J. W. Chastain. The said Chastain stated in the presence of a number of people that he would pay said draft drawn in Atlanta that this was before the draft came to Montgomery; that before the draft got to Montgomery said Chastain went with Mr. Compton to the New Farley National Bank and told Mr. Farley the President of the Bank that Mr. Compton needed some more money and desired Mr. Farley to advance the balance of the money to Mr. Compton. That Mr. Farley agreed to this but subsequently on consulting the Directors of the Bank declined. That after the draft came Mr. Chastain for the first time repudiated the right of Mr.

Compton to draw it; that the mules that were bought in Atlanta were guaranteed and that before the said draft reached Montgomery one of them was discovered to be nearly blind. That Mr. Compton then had some negotiations with the parties in Atlanta or with Mr. Chastain in which it was suggested that he claim a credit of $100.00 on the draft on account of the condition of said mule. That said Compton then requested said Chastain to pay the draft and allow him to draw back on the parties for the $100.00; Mr. Chastain told him he had better not do that; that he would not get his money back and that it was best to have them draw for the sum less $100.00. That thereupon the draft was sent back with the damages on the defective mule billed back to the Atlanta parties. That Mr. Chastain was a party to the certificate to the damage to the mule; that the draft then came back with authority to deduct $100.00 for the damages — mule and that Mr. Chastain then denied that Compton had any authority to draw the draft. That Mr. Compton then entered into some negotiations through his Attorney Mr. Andrews with the Montgomery Attorneys for the Georgia parties and wrote to these attorneys a letter which was as follows, to-wit:

MONTGOMERY, ALA., *Jan.* 26, 1907.

46 Messrs. Steiner, Crum & Weil, Attorneys at Law, City.

GENTLEMEN: In offering to return to the sellers the remainder of the stock now on hand and unsold recently bought from the Cranford Mule Company and S. Peck & Company, I do so upon the express condition that the delivery up of said stock shall not be considered as any admission of the rights of either of said parties to any recission of the contract of purchase and in drawing the check or draft in payment of the purchase money.

I insist that I was fully authorized by the firm of J. W. Chastain & Son to draw said draft and that it was drawn in good faith on my part in every respect.

I am willing to deliver up the stock so purchased, for the reason that the draft has not been paid and I desire that the sellers should be indemnified as fully as I can do so. I will turn over all other stock in my possession whether purchased from said parties or not, except a family horse and buggy—all the stock to be taken at a reasonable valuation to be agreed upon.

Yours truly, J. D. COMPTON.

That this letter was delivered to said Attorneys and the remainder of the mules that were shipped from Atlanta together with some mules belonging to Compton and were not in the lot shipped from Atlanta were delivered at an agreed valuation amounting to something over fourteen hundred dollars to the agent of the parties in Atlanta who held the draft.

Said evidence was objected to as being incompetent and irrelevant and was an attempt to have the judge go into an investigation of the guilt or innocence of the defendant, and the Court refused to allow it to be introduced. To this ruling and action of the judge presiding J. D. Compton then and there excepted.

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The foregoing being all of the proceedings and evidence in the cause the Court overruled said petition for *habeas corpus* and remanded said J. D. Compton back to the custody of S. S.
47 Belser as sheriff aforesaid and of said Joshua Tye as shown by the following order.

Ex Parte J. D. COMPTON.

Petition for Habeas Corpus.

The petition of J. D. Compton, filed January 29th, 1907, for the writ of *habeas corpus,* releasing him from custody of the respondents who hold him, under an arrest made by the Sheriff of this County, made on an executive warrant issued by the Governor of Alabama, on January 29th, 1907, upon a requisition from the Governor of Georgia, dated January 28th, 1907, coming on to be heard, comes the State of Alabama, by its attorneys, and also the said J. D. Compton in person and by his attorneys, and, upon motion of the said petitioner, he is allowed to amend and does amend his petition in said cause by a separate writing this day filed, and thereupon came the respondents, the said S. S. Belser Sheriff of Montgomery County, Alabama, and Joshua Tye, agent of the State of Georgia, and filed their answer or return to the said petition as amended, as also to the writ served upon them in said cause; thereupon, the petitioner demurred to said answer or return to said petition and as amended and the demurrers having been argued and considered,

It is ordered and adjudged that the said demurrer be and is overruled, and after hearing the evidence, I am of the opinion that the said petition should be denied.

It is, therefore, ordered and adjudged that the said petition of the said J. D. Compton for the writ of *habeas corpus* be and the same is denied, and the said Compton be and is remitted and remanded to the custody of the said agent of the State of Georgia, for extradition, pursuant to law; and the said Compton having given notice of an appeal to the Supreme Court of Alabama from this order, this judgment is suspended pending said appeal.

It is further ordered that upon the making, by the said Compton of a good and sufficient bond, in the sum of One Thousand Dollars payable to the Clerk of this Court for the use of the State of Georgia, or the Governor of Georgia, conditioned that upon the affirmance by said Supreme Court of said judgment, to appear before the Judge of said Court then and there to abide and perform what may
48 then be adjudged by said Judge against him in said prosecution, the said Compton be released from custody, pending said appeal and until the further order in the premises. And the State of Alabama also gives notice of an appeal from that part of said order allowing the said Compton to be released on bail pending said appeal.

It is further ordered that thirty (30) days from this date be and

are allowed for the prosecution of a bill of exceptions in said cause by either the said State of Alabama or the defendant or both.

Done this the 20th day of January 1907.

WILLIAM H. THOMAS,
Associate Judge, City Court on Montgomery.

And the said ruling of said presiding judge denying the petition of said Compton, the said Compton then and there duly excepted to the action of the judge in remanding him to the custody of said agent of the State of Georgia.

Said order allowed thirty days from the 30th day of January 1907, in which either party to said petition might present its bill of exceptions to said presiding judge on appeal to the Supreme Court of Alabama. And the said J. D. Compton on this the 25th day of February 1907, and within the time fixed by said order now presents this his bill of exceptions in said cause and the same is allowed, signed and sealed by said presiding Judge within said time, towit, on this the 25th day of February 1907.

WILLIAM H. THOMAS,
Associate Judge of City Court of Montgomery.

49 STATE OF ALABAMA, *Montgomery County:*

I, Henry N. Hughes, Clerk of the City Court of Montgomery in and for said State and County, do hereby certify that the foregoing pages numbered from one to forty-seven both inclusive contain a full, true and complete transcript of the record and proceedings of said Court in a certain cause lately pending before the Honorable William H. Thomas, Associate Judge of the City Court of Montgomery, wherein J. D. Compton was petitioner, as fully and completely as the same appears of record in said Court.

And I further certify that the said petitioner, J. D. Compton, did on the 30th day of January, 1907, pray for and obtain an appeal from the order or judgment of the Honorable William H. Thomas, Associate Judge of the City Court of Montgomery, made in the premises, to the Supreme Court of Alabama, to reverse said order or judgment of said Judge, and said petitioner gave bond, as required by order of said Judge, with H. L. Yelverton and W. R. Waller as sureties thereon, which said bond was approved by me, on the 30th day of January, 1907.

Witness my hand this the 25th day of April 1907.

H. N. HUGHES,
Clerk of the City Court of Montgomery.

50 And now comes the said J. D. Compton, the appellant and says there is error in the record and proceedings of the Court below, or Judge of the City Court of Montgomery, and he assigns the following errors:

1st. The Court below, or Judge, erred in overruling Appellant's demurrers to the return made to the writ of *habeas corpus*. Rec. P. P. 11, 12 13.

2nd. The Court below or Judge erred in holding the return made to the writ of *habeas corpus*, sufficient.

3rd. The affidavit purporting to have been made by J. W. Patterson and which was the basis of the demand for extradition, was insufficient in that it was not an affidavit made before a "magistrate" within the meaning of the Extradition Statutes enacted by the Congress of the United States, and the Court below erred in holding otherwise. Rec. p. p. 20-22.

4th. Said affidavit made by said Patterson was insufficient to warrant the arrest and extradition of this Appellant for each of the reasons severally assigned in the 1st, 2d, 3d, 5th, 10th, 11th, 13th and 14th grounds of demurrer, and the action of the Court below, or Judge, in overruling said grounds of demurrer is here assigned, as to each of said grounds separately and severally as error.

15th. The Court below or Judge erred in overruling appellant's objections to the admission in evidence of said affidavit of J. W. Patterson, and in admitting the same in evidence over said objections. Rec. p. p. 31-32.

16th. The Court or presiding Judge erred in receiving in evidence over the objection of appellant, the letter addressed by Arnold to the Governor of Georgia. Rec. p. 4, 5, 14, 20, 32.

17th. The Court or Presiding Judge erred in overruling Appellant's objection to the letter from Arnold to the Governor of Georgia. Rec. p. 32.

18th. The Court or Presiding Judge erred in overruling Appellant's objection to the reception in evidence of the warrant of
51 *of* arrest issued by the Governor of Alabama. Rec. p. 32.

19th. The Court or presiding Judge below erred in overruling Appellant's objection to the admission in evidence the Act of the Legislature of the State of Georgia establishing a criminal Court for the City of Atlanta, Ga. Rec. p. p. 33-37.

20th. The Judge or Court erred in overruling the Appellant's objection to the admission of the several sections contained in the volume purporting to be the "Code of Georgia," and in receiving it in evidence over Appellant's objections. Rec. p. 38-38.

21st. The Court or presiding Judge erred in overruling Appellant's objections to the admission in evidence of the case in the 91st Vol. of the Reports of the Supreme Court of Georgia and in receiving said case in evidence.

22nd. The Court or Presiding Judge erred in overruling Appellant's objection to the evidence of Shepard Bryan, and in admitting said evidence in respect to genuineness and official character of the volume containing the Act of the Legislature creating the Criminal Court at Atlanta, and of the volume purporting to be the Code of Georgia, and of the 91st Volume of Georgia Reports, containing the case introduced in evidence. Rec. p. 40.

23d. The Court or presiding Judge erred in refusing to admit the evidence offered by Appellant. Rec. p. p. 40-42.

24th. The said presiding Judge erred in refusing to release this Appellant from custody under said papers shown in the return to the writ of *habeas corpus* and in the evidence adduced. Rec. p. 43.

25th. The Court or presiding Judge below erred in refusing to discharge the said petitioner, (this Appellant) and in remanding him back to the officers holding him in arrest. Rec. p. 43.

26th. Said extradition proceedings shown in the return of said S. S. Belser and Joshua Tye to the writ of *habeas corpus,* alone or in connection with the evidence introduced did not warrant the arrest and detention of this Appellant and the presiding Judge erred in refusing to discharge him.

J. M. COMPTON AND
HILL, HILL & WHITING,
Att'ys for Appellant.

52 THE STATE OF ALABAMA, *Judicial Department:*

The Supreme Court of Alabama, November Term, 1906-7.

3. Div. 716.

J. D. COMPTON
v.
THE STATE OF ALABAMA.

Appeal from Order of Judge of City Court of Montgomery Denying Writ of *Habeas Corpus.*

HARALSON, *J.:*

Section 1821 of the Code provides that "any public or private statutes, or the proceedings of any legislative body, purporting on the face of the book to be printed by authority of the government or state, or territory, are evidence without further proof."

The State introduced certain sections of the Code of the State of Georgia, as contained in a book, on the first page of which appeared the words, "The Code of the State of Georgia, adopted December 15th, 1895. Prepared by John L. Hopkins, Clifford Anderson and Joseph R. Lamar. Vol. III. Atlanta, Georgia: The Foot & Davies Company, Printers & Binders, 1896." On the opposite page were the words, "Entered according to the Act of Congress, in 1896, by the State of Georgia, in the office of the Librarian of Congress at Washington."

In *Clanton v. Barnes,* 50 Ala. 261, it was held that, "The Revised Code of Mississippi, purporting on its face to have been published by the authority of the Legislature, is competent evidence
53 to prove the statutes therein contained."

In *Bradley v. Bank,* 60 Ala. 253, the same principle is announced; and in *Bush v. Garner,* 73 Ala. 163, it was held, again that the statutes of another State may be proved "by a printed volume purporting on its face to have been printed by authority of such State." *Falls v. U. S. S. L. & B. Co.,* 97 Ala. 417; *Hawes v. State,* 88 Ala. 71. The same is true of the act establishing the criminal court at Atlanta.

The Code of Georgia, was sufficiently proved to authorize the introduction of its sections offered in evidence. Moreover, the

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defendant virtually admitted the authenticity of the volume, by introducing, himself, a portion of it (section 832).

Section XI of the act establishing the criminal court of Atlanta introduced in evidence, provides that criminal proceedings in said court may be instituted by written information or accusation, setting forth the offense charged, containing the name of the prosecutor, and signed by the Solicitor General, and founded on affidavit,—and the judge of said court may, upon affidavit being made that a crime has been committed, issue his warrant for the arrest of said party.

Section 658 of the Criminal Code introduced by the State, defines the crime of "Fraudulently obtaining credit", and provides, among other things, that if any one by falsely representing his pecuniary responsibility, "shall obtain credit and thereby fraudulently get into possession of good or other valuable thing, (he) shall be deemed a cheat and swindler, and shall be punished as for a misdemeanor, and shall be compelled by the sentence of the court to restore to the party injured, the property so fraudulently obtained, if it can be done."

Section 884 of the Code prescribes the form of affidavit to be made (a substantial compliance with which, it is stated, will be sufficient), as follows: "Georgia, —— County. Personally came A. B. who on oath saith, that to the best of his knowledge and belief, C. B. did, on the — day of ——, in the year ——, in the county aforesaid commit the offense of ——, and this deponent makes this affidavit, that a warrant may issue for his arrest.—
54 A. B.—Sworn to and subscribed before me this the — day of ——. —— ——, J. P."

On the 28th of Jan. 1907, J. W. Patterson made an affidavit before W. W. Troy, a notary public of Fulton county Georgia, which was headed, "State of Georgia, Fulton County," reciting, "Came in person before me, (the notary public), J. W. Patterson, who being duly sworn on oath says, that from the best of his knowledge and belief, J. D. Compton is guilty of the offense of misdemeanor in this: (Here follows, a detailed statement of the facts, not stated on information and belief, but as facts which constituted the offense of falsely and fraudulently obtaining the possession of the property, of the value of $3,750.00, contrary to law, and the same is sworn, to, not on information and belief, but as being true.) This affidavit was filed with the clerk of the criminal court, and so certified by him.

It will be seen that the affiant swore "from the best of his knowledge and belief, (that) said J. D. Compton is guilty of the offense of a misdemeanor in this", and that the facts constituting the misdemeanor are not stated on information and belief, but as being true. To make the affidavit good, he was not required to swear that the accused was guilty of crime, but to state that he was guilty according to his knowledge and belief, stating the facts on which such knowledge and belief were founded. These were entirely sufficient on which to base the issuance of a warrant of arrest.

Armed with this accusation, the solicitor of the criminal court, on the 28th of January, 1907, addressed a communication to

the Governor of the State of Georgia, signed by him in his official capacity, reciting that, "At the January term, 1907, J. W. Patterson swore out an accusation against J. D. Compton for the offense of being a common cheat and swindler. The said J. D. Compton has fled to the State of Alabama, where he is now a fugitive from justice. I therefore respectfully ask that your Excellency will grant a requisition on the Governor of Alabama for the extradition of the said J. D. Compton, In order that he may be brought back to the State of Georgia, to stand his trial according to law, for which purpose alone he is wanted etc."

On the same day the said J. W. Patterson made an affidavit to the application of the solicitor to the Governor for a requisi-
55 tion, that he was "the prosecutor in the case of the State *v.* J. D. Compton, charged with being a common cheat and swindler, and that the requisition was wanted for the sole purpose of punishing the accused, and not in any way to collect a debt or money, or to force the payment thereof."

On the case as thus made and presented to the Governor of Georgia, he made requisition, in due form, on the 28th of January, 1907, on the Governor of Alabama, for the delivery of the accused as a fugitive from justice, to Joshua Tye, appointed by him, as the agent of the State of Georgia for bringing the accused to that State, having jurisdicition of his crime.

On the 29th of January, 1907, the Governor of Alabama, in response to said requisition, issued his order that the accused be apprehended and delivered to said Joshua Tye, who was authorized to receive and convey him to the State of Georgia, there to be dealt with according to law.

Whereupon, before said Tye could start with the accused to the State of Georgia, he sued out a writ of *habeas corpus* before the judge of the criminal division of the City Court of Montgomery, seeking his discharge from arrest. The judge of that court issued the preliminary writ, and on return thereto, and trial of the case, denied said writ, and remitted and remanded the accused to the custody of the agent of the State of Georgia, for extradition pursuant to law etc.

The Constitution of the United States provides, that "a person charged in any State with treason, felony or other crime, who shall flee from justice and be found in another State, shall, on demand of the executive authority of the state from which he fled be delivered up, to be removed to the state having jurisdiction of the crime." Art. IV, Sec. 2.

Section 5278 of the Revised Statutes of the United States, provides, that "whenever the executive authority of any state or territory demands any person as a fugitive from justice, of the executive authority of any state or territory to which said person has fled, and produces a copy of the indictment found, or *an affidavit made before a magistrate* (italics ours) of any state or territory, charging the person demanded, with having committed treason, felony
56 or other crime, certified as authentic by the Governor or chief magistrate of the state or territory from whence the person so charged has fled, it shall be the duty of the executive

rity of the state or territory to which such person has fled, to him to be arrested and secured," and to be delivered up to the of the demanding state or territory.

struing this provision of the Constitution and this statute, *parte* The State *in re* Mohr, 73 Ala. 503, 511, the court said, act of 1793; makes conclusive the production of a copy of the ment found, or *an affidavit* (emphasis ours) made before a trate of the demanding state, "charging the person demanded having committed treason, felony or other crime."

ese papers, if in due form, are made conclusive evidence of uilt of the accused, when assailed on *habeas corpus*. It may be led, therefore, as the settled doctrine of the courts, that a *facie* case is made, when the return to the writ of *habeas* s shows: (1) A demand or requisition for the prisoner made e executive of another state, from which he is alleged to have (2) a copy of the indictment found, or affidavit made before gistrate, charging the alleged fugitive with the commission of ime certified as authentic by the executive of the state making emand; (3) the warrant of the governor authorizing the arrest. these facts are made to appear by papers regular on their face, is a weight of authority holding that the prisoner is *prima* under legal restraint." *Barriere v. State*, 39 So. Rep. 57, *ll v. Hawley*, 78 Conn. 150. It was not competent for the ier to require the court in the state where he was arrested to re into the merits of the crime charged, but it was open to him w that he was not a fugitive, and that the process under which sought to be held is void. The burden was on him to disprove *rima facie* case presented against him.—*Mohr* and *Barriere's supra; Devine's* case, 74 Miss. 715.

Munsey v. Clough, 196 U. S. 364 (L. ed. 515), it was held that ical sufficiency of the charge, and the question of procedure it, are not open to inquiry on *habeas corpus*, to review the issuance of the warrant of arrest in interstate extradition proceedings.

Our conclusion is, so far as anything appears to the con- that the requisition for the prisoner by the Governor of ia, on the Governor of Alabama, and the extradition process e latter, were proper, and that the denial of the writ of *habeas s*, by the judge of the City Court of Montgomery, was free error.

irmed.

son, C. J., and Dowell and Denson, JJ., concur.

58 *Minutes Supreme Court of Alabama.*

November Term, 1906.

J. D. COMPTON
vs.
THE STATE OF ALABAMA.

3 Div. 716.

Appeal from Montgomery City Court.

MAY 16TH, 1907.

Come the parties by attorneys, and submit this cause on briefs for decision.

J. D. COMPTON
vs.
THE STATE OF ALABAMA.

3 Div. 716.

JUNE 16TH, 1907.

Appeal from Judgment and Order of Judge of City Court of Montgomery, Denying Discharge on *Habeas Corpus* Proceedings.

Come the parties by attorneys, and the record and matters therein assigned for errors, being submitted on briefs and duly examined and understood by the Court, it is considered that in the record and proceedings of the City Court there is no error. It is therefore considered that the judgment and order of the Judge of the City Court, denying discharge of the petitioner be in all things affirmed. It is also considered that the Appellant pay the costs of appeal of this Court and of the City Court.

59 STATE OF ALABAMA, *County of Montgomery:*

I, Robt. F. Ligon, Clerk of the Supreme Court of the State of Alabama, by virtue of the annexed writ of error, and in obedience thereto, do hereby certify that the foregoing fifty-seven (57) pages, contain a true and complete transcript of the record and proceedings had in said Court, in the cause of J. D. Compton, Plaintiff in error *vs.* The State of Alabama, Defendant in error, as the same remains of record and on file in this office.

In testimony whereof, I have caused the seal of said Court to be affixed, at the Capitol, in the City of Montgomery, County of Montgomery, and State of Alabama, on this the 21st day of August, 1907.

[Seal of the Supreme Court of Alabama.]

ROBERT F. LIGON,
Clerk Supreme Court of Alabama.

DARK PAGE BLEEDTHRU

60 In the Supreme Court of Alabama.

J. D. COMPTON, Appellant,
v.
THE STATE OF ALABAMA, Appellee.

To the Honorable Jno R. Tyson, Chief Justice of the Supreme Court of the State of Alabama:

Now comes J. D. Compton, the above named relator and appellant, by his attorneys Jno. M. Chilton, Hill, Hill & Whiting and Gunter & Gunter, and complains and alleges that he is a citizen of the United States of America; that in the above entitled matter on the 13th day of June, A. D. 1907, final judgment was rendered against your petitioner by the Supreme Court of Alabama, that being the highest court of law or equity in the said State of Alabama, wherein it was charged that certain extradition proceedings originating in the State of Georgia, and wherein the Governor of the State of Georgia had demanded of the Governor of the State of Alabama the arrest of your petitioner as a fugitive from the justice of the State of Georgia, the validity of which said proceedings had been tested by a writ of *habeas corpus* sued out by your petitioner before the Honorable W. H. Thomas, Judge of the City Court of Montgomery, from whose decision remanding your petitioner to the custody of the agent of the State of Georgia, the appeal in this cause was sued out, were in all respects valid and justified the further detention of your petitioner. That in and by said *habeas corpus* proceedings it was insisted and contended by your petitioner that the affidavit made in the State of Georgia for his arrest, and the proceedings had in connection therewith, did not, when supplemented by the evidence introduced before said judge on the hearing of said proceedings, comply with the provisions of Sec. 5278 of the Revised Statutes of the United States in that in said proceedings there was not produced a copy of an indictment found, or an affidavit made before a magistrate of said State of Georgia charging your petitioner, the said J. D. Compton, with having committed treason, felony, or other crime. That the contention of your petitioner and the right claimed by him under said Sec. 5278 of the Revised Statutes of the United States, were determined adversely to him by said Honorable W. H. Thomas, and an appeal was taken from his decision to this Honorable Court as provided by the statutes of the State of Alabama. That this Honorable Court on, towit: the 13th day of June, 1907, rendered its final judgment affirming said

61 decision of said Honorable W. H. Thomas, and thereby deciding and adjudging the right claimed by your petitioner under Sec. 5278 of the Revised Statutes of the United States adversely to your petitioner.

That in said proceedings in this court various grounds were assigned upon which your petitioner claimed that said extradition proceedings did not, when tested by the provisions of said Sec. of the Revised Statutes of the United States, comply with the pro-

visions thereof. That in so determining this Honorable Court has denied to your petitioner a right claimed under the laws of the United States, to-wit: under said section of the Revised Statutes of the United States.

Wherefore your petitioner prays that the allowance of a writ of error from the Supreme Court of the United States to the Supreme Court of the State of Alabama and the judges thereof, to the end that the record in said matter may be removed into the Supreme Court of the United States, and the error complained of by your petitioner may be examined and corrected and said judgment reversed and your petitioner discharged.

And your petitioner prays that upon the determination of said proceedings in the Supreme Court of the United States that your petitioner be released upon bail, the amount and condition whereof your petitioner prays your Honor to fix.

And petitioner will ever pray, etc.

J. M. CHILTON,
GUNTER & GUNTER,
HILL, HILL & WHITING,
Att'ys for Compton.

62 In the Supreme Court of Alabama.

J. D. COMPTON, Appellant,
v.
THE STATE OF ALABAMA, Appellee.

The petition of J. D. Compton by J. M. Chilton, Hill, Hill & Whiting and Gunter & Gunter, hereby sets forth that on or about the 13th day of June, A. D. 1907, the Supreme Court of the State of Alabama made and entered a final order and judgment herein in favor of the State of Alabama and against the petitioner, the said J. D. Compton, in which final order and judgment and the proceedings had prior thereunto in this cause, certain errors were committed to the prejudice of said J. D. Compton, all of which will more in detail appear from the assignment of errors which is filed with this petition.

That the said Supreme Court of the State of Alabama is the highest court of the said State of Alabama in which a decision in this suit and this matter could be had.

Wherefore the said J. D. Compton petitions and prays that a writ of error from the Supreme Court of the United States may issue in this behalf to the Supreme Court of the State of Alabama for the correction of errors so complained of, and that a transcript of the Record, proceedings, and papers in this cause, duly authenticated may be sent to the Supreme Court of the United States.

Dated this 14 day of June, A. D. 1907.

J. M. CHILTON,
GUNTER & GUNTER, &
HILL, HILL & WHITING,
Attorneys for J. C. Compton.

63 In the Supreme Court of Alabama.

J. D. COMPTON, Appellant,
v.
THE STATE OF ALABAMA, Appellee.

The above entitled matter coming on to be heard upon the petition of the appellant therein, for a writ of error from the Supreme Court of the United States to the Supreme Court of the State of Alabama, and upon examination of said petition and the Record in said matter, and desiring to give the petitioner an opportunity to present in the Supreme Court of the United States the questions presented by the Record in said matter.

It is ordered that a writ of error be, and is hereby allowed to this Court from the Supreme Court of the United States, and that the bail bond of said petitioner be, and is hereby fixed in the sum of One Thousand Dollars, conditioned to appear before the Honorable W. H. Thomas, Judge of the City Court of Montgomery, to answer in this proceeding when the same shall have been finally determined on said writ of error. And said bond now being tendered and approved.

This the 14 day of June, 1907.

JNO. R. TYSON,
Chief Justice of the Supreme Court of the State of Alabama.

64 Copy.

STATE OF ALABAMA, *Montgomery County:*

Know all men by these presents, that we J. D. Compton and H. L. Yelverton are held and firmly bound unto the State of Alabama in the sum of One Thousand Dollars for the payment of which well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, or administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 14th day of June A. D. 1907.

The condition of the above obligation is such that whereas a writ of error has been allowed by the Hon. John R. Tyson, Chief Justice of the Supreme Court of Alabama, to the Supreme Court of Alabama, in a certain cause lately pending and determined by the Supreme Court of Alabama in which the said J. D. Compton was appellant and the State of Alabama was appellee—said cause originating in certain *habeas corpus* proceedings before Hon. W. H. Thomas, Judge of the City Court of Montgomery to test the validity of certain extradition proceedings set forth in the record in said cause, now if the said J. D. Compton shall appear before the said Hon. Wm. H. Thomas, Judge of the City Court of Montgomery to answer in said proceedings, when the same shall have been determined, on said writ

of error, then this obligation to be void; otherwise to remain in full force and effect.

J. D. COMPTON.
H. L. YELVERTON.

Approved June 14th, 1907.
JNO. R. TYSON,
Chief Justice.

65 In the Supreme Court of Alabama.

J. D. COMPTON, Appellant,
vs.
THE STATE OF ALABAMA, Appellee.

The said J. D. Compton having petitioned that a writ of error be allowed from the Supreme Court of the United States to the Supreme Court of Alabama, removing this cause from the state court to said Supreme Court of the United States, now files with his said petition the following assignment of errors:

1. Said Supreme Court of Alabama erred in determining that an affidavit made by J. M. Patterson as a predicate for the proceedings in the State of Georgia, was a sufficient compliance with the provisions of Sec. 5278 of the Revised Statutes of the United States.

2. Said Supreme Court in its final judgment in said cause erred in holding and determining that the proceedings had in the State of Georgia, as shown by the Record, were sufficient to authorize the Governor of Alabama to issue his warrant of arrest, when tested by the provisions of Sec. 5278 of the Revised Statutes of the United States.

3. The proceedings shown by the return to the writ of *habeas corpus* in said cause, and the evidence supplementary thereto introduced before the judge on the hearing of said petition for *habeas corpus*, failed to show that there had been an indictment found or an affidavit made before a magistrate of the State of Georgia charging the said J. D. Compton with having committed treason, felony or other crime, as required by Sec. 5278 of the Revised Statutes; and the Supreme Court of Alabama in its said final judgment rendered on the 15th day of June, 1907 erred in determining to the contrary.

J. M. CHILTON,
GUNTER & GUNTER,
HILL, HILL & WHITING,
Attorneys for J. C. Compton.

66 Copy.

STATE OF ALABAMA, *Montgomery County:*

Know all men by these Presents, That we, J. D. Compton as principal, and Fox Henderson and H. T. Babcock, as sureties are held and firmly bound unto the State of Alabama in the sum of

DARK PAGE BLE

Two Hundred and Fifty Dollars ($250.00) of the payment of which well and truly to be made we bind ourselves and each of us, our, and each of our heirs, executors and administrators, jointly and severally firmly by these presents.

Sealed with our seals and dated this 8th day of August, 1907.

The condition of the above obligation is such that whereas, the said J. D. Compton has sued out a writ of error returnable before the Supreme Court of the United States in a certain proceeding in *habeas corpus* wherein the State of Alabama is the Plaintiff and prosecutor and said J. D. Compton is the Defendant.

Now, if the said J. D. Compton shall fail to make his plea good and shall answer all costs that may be adjudged against him in said proceedings, then this obligation to be void, otherwise to remain in full force and effect.

J. D. COMPTON.
FOX HENDERSON.
H. T. BABCOCK.

Approved Aug. 8th, 1907.

R. F. LIGON,
Clerk Supreme Court.

67 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Judges of the Supreme Court of the State of Alabama, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the State of Alabama, before you, or some of you, being the highest court of law of said State in which a decision could be had in the said suit between J. C. Compton appellant and The State of Alabama, appellee, wherein *in* was drawn in question the construction of a statute of the United States and the decision was against the right, privilege or exemption specially set up or claimed under such clause of the said statute a manifest error hath happened, to the great damage of the said J. D. Compton, plaintiff in error, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within 30 days from the date hereof *in the said* in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct the errors what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the

Supreme Court of the United States, the 14th day of June, in the year of our Lord one thousand nine hundred and seven.

[Seal of the United States Circuit Court Middle District of Alabama.]

J. W. DIMMICK,
Clerk of the Circuit Court of the United States, for the Middle Dist. of Alabama.

Allowed by
JNO. R. TYSON,
Chief Justice.

68 Supreme Court of the United States.

J. D. COMPTON, Plaintiff in Error,
v.
THE STATE OF ALABAMA, Defendant in Error.

J. D. Compton having prayed for and obtained a writ of error directed to the Supreme Court of Alabama, in said cause, citation and notice thereof is hereby waived.

ALEX. M. GARBER,
Attorney General State of Alabama.

June 19th 1907.

69 STATE OF ALABAMA, *County of Montgomery:*

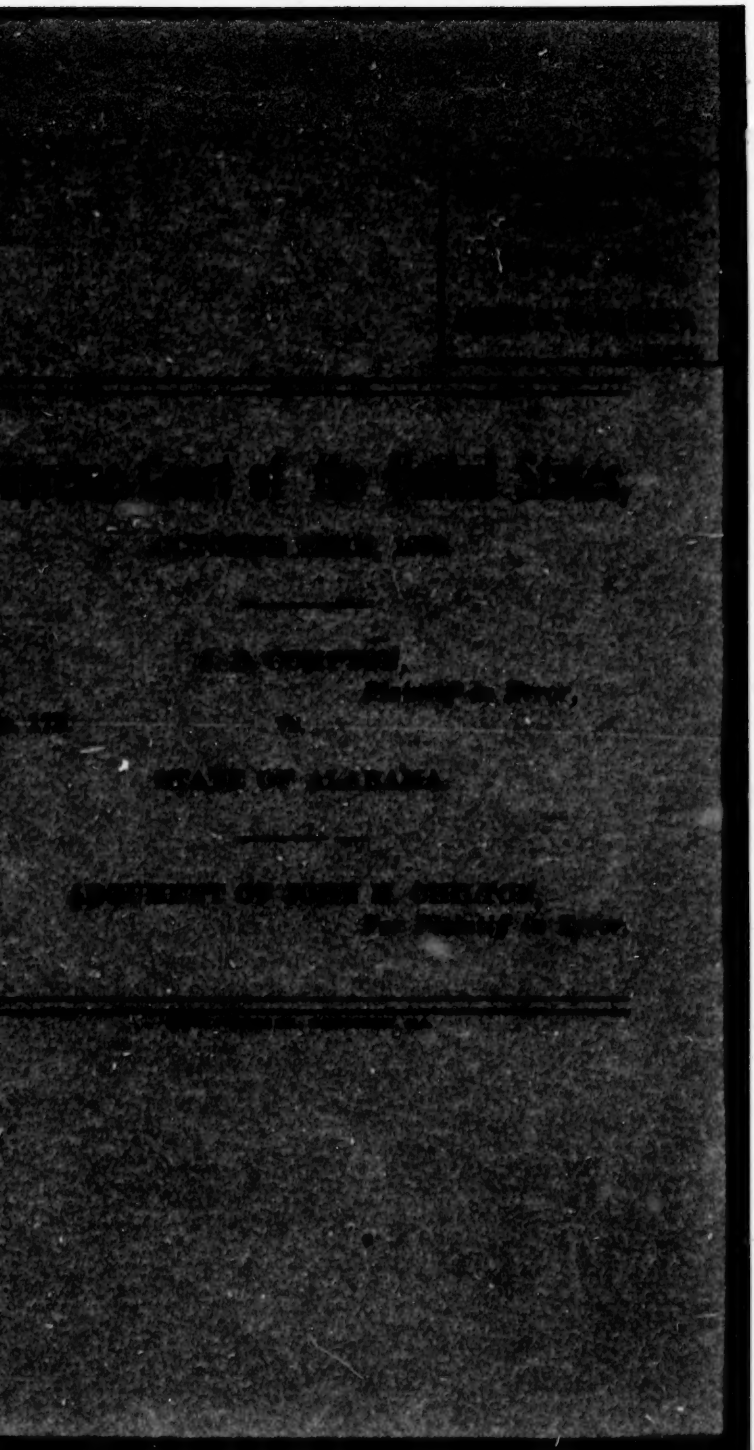
I, Robt. F. Ligon, Clerk of the Supreme Court of the State of Alabama, by virtue of the within writ of error, and in obedience thereto, do hereby send herewith, the record and proceedings in said cause of J. D. Compton Plaintiff in error *vs.* The State of Alabama Defendant in error, duly certified and authenticated, according to law, to the Honorable Supreme Court of the United States.

In Testimony Whereof, I have caused the seal of said Court to be hereunto affixed, at the Capitol, in the City of Montgomery, County of Montgomery, and State of Alabama, on this the 21st day of August, 1907.

[Seal of the Supreme Court of Alabama.]

ROBERT F. LIGON,
Clerk Supreme Court of Alabama.

Endorsed on cover: File No. 20,850. Alabama supreme court. Term No. 175. J. D. Compton, plaintiff in error, *vs.* The State of Alabama. Filed September 9th, 1907. File No. 20,850.



Supreme Court of the United States,

OCTOBER TERM, 1908.

J. D. COMPTON,
Plaintiff in Error,

No. 175. vs.

STATE OF ALABAMA.

ARGUMENT OF JOHN M. CHILTON,
For Plaintiff in Error.

STATEMENT OF CASE.

The case had its origin in an attempt to extradite the plaintiff in error Compton, from the State of Alabama to the State of Georgia on the charge of having violated Section 658 of the Code of Georgia which is as follows:

> "If any person by false representation of his own responsibility, wealth, or mercantile correspondence and connections, shall obtain a credit, and thereby defraud any person of any money, or other valuable thing, or shall cause or procure others to report falsely of his honesty, respectability, wealth,

> or mercantile character, and by thus imposing on the credulity of any person, shall obtain a credit and thereby fraudulently get into possession of goods, or other valuable thing, he shall be deemed a cheat and swindler, and shall be punished as for a misdemeanor and he shall be compelled by the sentence of the Court to restore to the party injured the property so fraudulently obtained if it can be done."
>
> Record, p. 32.

Compton sued out a writ of habeas corpus before a Judge of the State Court in Alabama in which he questioned the validity of the extradition proceedings in various respects.

On a hearing he was remanded by the Judge to the custody of the agent of the State of Georgia and from this judgment an appeal was sued out to the Supreme Court of Alabama—the highest court of the State; and from the judgment of the latter court affirming the order appealed from, the case is brought here by writ of error.

The proceedings had before the trial Judge appeared twice in the record, on the appeal to the State Supreme Court. First, as constituting the record proper; and next, in the bill of exceptions sealed by the trial Judge —both these modes of presenting the case on appeal having been adopted out of great caution.

The extradition proceedings proper were set up in the return of the agent of the State of Georgia, found on pp. 18-24 of the record. They consisted:

First.—Of the warrant of the Governor of Alabama honoring the requisition by the Governor of Georgia, with a return thereon showing the arrest of Compton.

Second.—The demand of the Governor of Georgia on the Governor of Alabama. Record, p. 20.

Third.—A communication addressed to the Governor of Georgia stating in substance that at the January term, 1907, J. W. Patterson swore out an accusation against J. D. Compton for the offense of being a common cheat and swindler, and that said Compton had fled to the State of Alabama where he was then a fugitive from justice. The Governor was therefore requested to grant a requisition on the Governor of Alabama for the extradition of Compton in order that he might be brought back to the State of Georgia to stand trial; that the name of Josiah Tye was suggested as a suitable person to act as agent of the State of Georgia in bringing back said fugitive and that two certified copies of the "bill of indictment are herewith forwarded as required by law." This is followed by the signature "LOWERY ARNOLD, Solicitor, Criminal Court of Atlanta." Record, pp. 20-21.

Fourth.—An affidavit signed by J. W. Patterson and sworn to before A. B. Harrison "Notary Public, Fulton Co., Ga." Stating that said Patterson is the prosecutor in the case of State vs. J. D. Compton, charged with being a common cheat and swindler, and for whom application for requisition is made, "that the requisition is wanted for the sole purpose of punishing the accused, and not in any way to collect a debt or money, or to force the payment thereof." Record p. 21.

Fifth.—An affidavit by J. W. Patterson and purporting to give an account of the transactions constituting the alleged crime.

The beginning is as follows:

"The State of Georgia, Fulton County:

Came in person before me, J. W. Patterson, who, being duly sworn deposes and says on oath that from the best of his knowledge and belief J. D. Compton is guilty of the offense of misdemeanor in this": (Here follows a statement of transactions had with persons other than said Patterson in which it is alleged that certain mules and horses were sold to Compton on the faith of a check drawn on the Fourth National Bank of Montgomery to which he signed the name of J. W. Chastain & Son and his own name.

The affidavit states in substance that Compton came to the place of business of the Miller Union Stock Yards in Fulton County, Georgia, for the purpose of purchasing stock. That several persons, who are named, had stock consisting of horses and mules and that Compton agreed to purchase of each of these persons severally, a stated number of animals. The price in the aggregate being $3,750.00.

That Pat J. Clyatt was the Cashier of the Miller Union Stock Yards and in payment for said stock "the said J. D. Compton tendered to the said Pat J. Clyatt who was cashier of said stock yards, and was acting as agent for the said C. H. Tribby, S. R. Bratton, S. Pack & Co. and the Cranford Horse and Mule Co. a draft for said amount, to-wit, $3,750.00, drawn on the Fourth National Bank of Montgomery, Alabama, and signed 'J. W. Chastain & Son, J. D. Compton.' When tendering this draft, the said J. D. Compton stated that he and J. W. Chastain were partners, and that he had a right to sign the name of J. W. Chastain & Son."

That Clyatt, relying upon and believing said statements of Compton, accepted the draft in payment of the stock and allowed Compton to ship the stock away.

That Chastain & Son were patrons of the Miller Union Stock Yards and did a considerable business with them. That the statements of Compton that he was a partner of J. W. Chastain & Son and that he had a right to sign the name of J. W. Chastain & Son to the draft were false and fraudulent and made for the purpose of deceiving said Clyatt. That the draft in the regular course of business was returned unpaid and remains unpaid and that Compton had no authority to sign the name of J. W. Chastain & Son and was not a partner of J. W. Chastain, etc.

The affidavit is signed by J. W. Patterson and its jurat is as follows:

"Sworn to and subscribed before me this 29th day of Jan., 1907. W. W. Troy,
N. P. of Fulton Co., Ga."

With this affidavit was the certificate of Arnold Broyles, Clerk of the Superior Court, of Atlanta, certifying that the "foregoing is a true copy of the affidavit of J. W. Patterson accusing J. D. Compton of the offense of misdemeanor. The original affidavit being on file in this office." Record pp. 21-23.

Sixth.—The paper signed by the Governor of Georgia appointing Joshua Tye agent of the State to receive the person of Compton.

To the return of the officers showing that Compton was held under the foregoing papers a demurrer was interposed in which it was insisted, inter alia,

1st. That Patterson's affidavit failed to show that he had any connection with the transactions mentioned or set forth therein or that he had personal knowledge of

the truth of any of the statements made therein, the affidavit purporting to have been made upon the best of his knowledge and belief.

2d. That the affidavit appears to have been made merely upon information and belief.

3d. That it did not appear from said affidavit or from any affidavit or from any of said papers attached to the return, that said affidavit was made before a magistrate as is required to be done by Section 5278 of the Revised Statutes of the United States.

5th. It appeared that the affidavit had been made before a Notary Public before whom as a magistrate the prosecution was not to be heard, and that no other charge under oath appears to have been made against the petitioner, J. D. Compton.

* * * * * *

10th. That it appeared from the papers attached to said return that the Governor of Alabama had no authority to issue his warrant, "in that no indictment found on affidavit charging a criminal offense such as is required by Section 5278 of the Revised Statutes of the United States existed."

11th. That the warrant of the Governor of Alabama for the arrest of said J. D. Compton was illegal and void in that it was not supported by an affidavit showing probable cause.

12th. That it did not appear from the return or from the papers attached to it as exhibits that any "criminal prosecution was pending before any Court or magistrate."

13th. That it did appear that the only affidavit made in the State of Georgia was made before a Notary Pub-

lic and it did not appear that the Notary Public was a magistrate under the laws of Georgia.

14th. That the proceedings had in Georgia as shown by said return and the exhibits to said return did not conform to the requirements of Section 5278 of the Revised Statutes of the United States in that there was not produced to the Governor of the State of Alabama a copy of an indictment found or an affidavit made before a magistrate of any State or Territory charging the person demanded with having committed treason, felony or other crime. Record pp. 24-25.

The trial Judge overruled these demurrers and the propriety of this ruling was one of the question presented to the Supreme Court. After the trial Judge overruled the demurrers, he proceeded to receive evidence in support of the petition as disclosed by pages 24 to 36 of the record—Compton reserving exceptions to the admission of the evidence as offered. The extradition papers themselves were first offered in evidence and practically the same objections were urged to them as were presented by the demurrers to the return. Record pp. 25-26.

There was next offered an act establishing the Criminal Court of Atlanta. Section XI of this act provides that prosecution in the court may be instituted by written information or accusation plainly and distinctly setting forth the offense charged, containing the name of the prosecutor and signed by the Solicitor General and founded on affidavit.

That the Judge of the court may upon affidavit being made that a crime has been committed, issue his warrant for the arrest of the party; and that if the party after his arrest does not desire a committal trial, he

shall give bond to appear at said Criminal Court for trial or be committed to jail. If, however, he desires a committal trial, he shall be taken before some proper officer other than the judge of said court, for that purpose. That this power in the Judge to issue warrants is not intended to deny to other officers the right to issue warrants for and bind over offenders to said Court.

That the proceedings, after information or accusation, shall conform to like proceedings in the Superior Courts except that the jury shall consist of five, to be selected from a panel of twelve. Record pp. 27-30..

On the fly leaf of this book appeared the following:

"Acts and Resolutions of the General Assembly of the State of Georgia, 1890-91, Vol. II. Compiled and published by authority. Atlanta, Ga., George W. Harrison, State Printer (Franklin Publishing House) 1892."

Compton objected to the introduction of the act on the ground, first that it was incompetent and, second, that it had not been sufficiently proved or authenticated. The court overruled said objection and admitted said act in evidence and exception was reserved.

The State then offered Sections 1275, 658, 670, 883 and 884 of the Code of Georgia. These Sections were as follows:

> "670 (4595). Other offense of like kind.—Any person using any deceitful means or artful practice, other than those which are mentioned in this Code, by which an individual, or the public, is defrauded and cheated, shall be punished as for a misdemeanor.
>
> "883 (4714). What affidavit and warrant must state.—An affidavit made, or warrant issued, for

the arrest of an offender against the penal laws, shall state as nearly as practicable the following facts, to-wit: The offense, the County in which the same was committed, and the time when committed, and when the offense charged is larceny, the ownership of the property alleged to have been stolen, or the person from whose possession it was taken, shall as far as practicable be stated in the affidavit and warrant.

"884 (4715). Form of affidavit.—An affidavit substantially complying with the following form, shall, in all cases, be sufficient:

"Georgia,————County:

"Personally came A. B. who on oath saith that, to the best of his knowledge and belief, C. D. did, on the_____day of_____in the year_____, in the County aforesaid, commit the offense of _____, and this deponent makes this affidavit that a warrant may issue for his arrest.

A. B.

"Sworn to and subscribed before me, this the _____day of_____, 1866.

_____J. P."

"1275. Regulations for obtaining requisitions.—In addition to any rules that are now or may hereafter be adopted by the Governor, the following rules shall be observed as a condition precedent to obtain a requisition by him for the extradition of any fugitive from the justice of this State:

"1. The application for a requisition as aforesaid must be made to the Governor of this State by a Solicitor General, or a Solicitor of a County Court, Judge of a City or County Court, or

the Mayor of any City or Town of this State, and must show the full name of the fugitive for whom extradition is asked, the crime charged, the State or Territory to which he has fled, the full name of the person suggested to act as Agent for this State to receive and convey said fugitive to this State, said agent in no case to be the prosecutor, but the Governor may, in his discretion appoint some other suitable person as agent of this State to receive and convey the prisoner. The application must also show that the ends of public justice require that the fugitive be brought back to this State for trial, and that the requisition is not wanted for the purpose of enforcing the collection of a debt, or for any private purpose whatever, but solely for the purpose of a criminal prosecution as provided by law.

"2. The application must be accompanied by the affidavit of the prosecutor, if any, stating that the requisition is wanted for the sole purpose of punishing the accused, and not in any way to collect a debt or money, or to enforce the payment thereof.

"3. If the fugitive has been indicted, two certified copies of the indictment or presentment must be forwarded to the Governor with the application.

"4. If no indictment has been preferred, and an affidavit is the basis of the requisition, it must describe the crime committed, with all the particularity required in an indictment, and two certified copies of the affidavit must accompany the petition for the requisition.

"Sec. 658 (4587). Fraudulently obtaining credit.—If any person by false representation of his own responsibility, wealth, or mercantile cor-

respondence and connections, shall obtain a credit, and thereby defraud any person of any money, or other valuable thing, or shall cause or procure others to report falsely of his honesty, respectability, wealth, or mercantile character, and by thus imposing on the credulity of any person, shall obtain a credit and thereby fraudulently get into posesssion of goods, or other valuable thing, he shall be deemed a cheat and swindler, and shall be punished as for a misdemeanor and he shall be compelled by the sentence of the court to restore to the party injured the property so fraudulently obtained if it can be done." Record pp. 31-32.

The petitioner objected to the introduction in evidence of the book purporting to be the Code of Georgia on the ground first, that the volume had not been sufficiently proved; and second, that said sections offered were incompetent and irrelevant. The court overruled the objection and there was an exception.

On the first page of the book appeared the following:

"THE CODE
OF
STATE OF GEORGIA,
Adopted December 15th, 1895.
Prepared by John L. Hopkins, Clifford
Anderson and Joseph R. Lamar.
Vol. III. Atlanta, Georgia.
The Foote and Davies Company,
Printers and Binders.
1896." Record p. 30.

The State, over the objection of Compton, then introduced a case in Volume 91 of the Reports of the Supreme Court of Georgia beginning at page 207—the objection being first, that it was irrelevant, and second, that it was incompetent.

It was agreed to save transcribing the opinion, that the report of the case in Volume 91 might be referred to by the Supreme Court of Alabama as though set out at length in the record. Record p. 32.

The State then introduced one Shepard Bryan as a witness who was permitted to testify over the objection of Compton; that he was a licensed Attorney in the Courts of Georgia and had been practicing in said Courts for a number of years and was familiar with its decisions and knew its official volumes. That the volume of Session Acts containing the creation and organization of the Criminal Code of Atlanta were the Acts of the Legislature of Georgia, and that the volume purporting to be the Code of Georgia was the Code; and that the decision reported in 91 Georgia was a decision of the Supreme Court of Georgia.

The grounds of objections assigned were first that the evidence was incomplete, and second, that it was illegal. Record pp. 32-33.

Compton himself introduced Section 882 of the Code of Georgia from the same volume that had been introduced in evidence by the State. This section was as follows:

> "Sec. 882 (4713). Who may issue warrants.—Any judge of a Superior Court, City or County Court, or justice or any corporation officer clothed by law with the powers of a justice, may isssue his

warrant for the arrest of any offender against the penal laws based on his own knowledge or the information of others given to him under oath." Record p. 33.

Compton then proposed to introduce certain evidence as to the circumstances under which the check was drawn in Atlanta. This showed substantially that before the drawing of the check, he had been buying stock for Chastain & Son and signing checks in payment of the same which were duly honored. That an arrangement existed with J. W. Chastain of the firm by which said Chastain was to advance him money at one per cent per month. That he, Compton, had been to St. Louis, drawn a draft there for twenty odd hundred dollars which Chastain had paid; that he had drawn another check at Petrey, Alabama, on the Fourth National Bank to which he signed the name of Chastain & Son, which was paid by the direction of said Chastain. That after said Compton had drawn the Atlanta draft he returned to his home in Montgomery, Alabama, and proceeded to dispose of the horses and mules he had purchased with the draft and as fast as he disposed of the same, turned over the money to J. W. Chastain. That said Chastain stated in the presence of a number of people that he would pay the draft and that this was before the draft reached Montgomery. That before the draft got to Montgomery Chastain went with Compton to the New Farley National Bank and told Mr. Farley, the President of the Bank, that Compton needed some more money and desired Mr. Farley to advance the balance of the money to Mr. Compton. That the President agreed to make the advance, but subsequently, on con-

sulting the Directors of the Bank, declined. That after the draft came Mr. Chastain for the first time repudiated the right of Compton to draw it.

The mules bought in Atlanta were guaranteed and that before the draft reached Montgomery one of them was discovered to be nearly blind. That Compton had some negotiations with the Atlanta parties or with Mr. Chastain in which it was suggested that he claim a credit of $100.00 on the draft on account of the condition of said mule. Compton then requested said Chastain to pay the draft and allow him to draw back on the parties in Atlanta for the $100.00, but Chastain told him he had better not do that—that he would not get his money back and that it was best to have them draw for the sum less $100.00. That thereupon the draft was sent back to Atlanta with the $100.00 damages billed back to the Atlanta parties. Mr. Chastain was a party to the certificate to the damage to the mule. That the draft came back with authority to deduct $100.00 for the damages and Mr. Chastain then denied that Compton had any authority to draw the draft.

That Compton then entered into some negotiations through his Attorney, Mr. Andrews, with the Montgomery Attorneys for the Atlanta parties and wrote them a letter which appears in the record.

In this letter it is stated substantially that in offering to return to the sellers the remainder of the stock on hand and unsold Compton did so upon the "express condition that the delivery up of said stock shall not be considered as any admission of the rights of either of said parties to any recision of the contract of purchase and in drawing the check or draft in payment of the purchase money."

That he insisted that he was fully authorized by the firm of J. W. Chastain & Son to draw said draft and that it was drawn in good faith on his part in every respect.

That he was willing to deliver up the stock so purchased for the reason that the draft had not been paid and desired that the sellers should be indemnified as fully as he could do so. That he would turn over all other stock in his possession whether purchased from said parties or not, except a family horse and buggy—all the stock to be taken at a reasonable valuation to be agreed upon.

That this letter was delivered to the Montgomery Attorneys and the remainder of the mules together with some of his own mules not purchased in Atlanta were delivered at an agreed valuation amounting to something over fourteen hundred dollars, to the agent of the parties in Atlanta who held the draft.

There was an objection to all this evidence on the part of the State which was sustained by the trial Judge and exception was reserved.

This is the substance of the case made by the record:

ASSIGNMENTS OF ERROR.

The judgment of the lower court became merged in that of the Supreme Court and as the judgment of the latter court was merely one of affirmance the Assignments of Error are necessarily general in character.

They will be found at page 46 of the record and are as follows:

> "1. Said Supreme Court of Alabama erred in determining that an affidavit made by J. M. Patter-

son as a predicate for the proceedings in the State of Georgia, was a sufficient compliance with the provisions of Sec. 5278 of the Revised Statutes of the United States.

"2. Said Supreme Court in its final judgment in said cause erred in holding and determining that the proceedings had in the State of Georgia, as shown by the Record, were sufficient to authorize the Governor of Alabama to issue his warrant of arrest, when tested by the provisions of Sec. 5278 of the Revised Statutes of the United States.

"3. The proceedings shown by the return to the writ of *habeas corpus* in said ceuse, and the evidence supplementary thereto introduced before the judge on hearing of said petition for *habeas corpus*, failed to show that there had been an indictment found or an affidavit made before a magistrate of the State of Georgia charging the said J. D. Compton with having committed treason, felony or other crime, as required by Sec. 5278 of the Revised Statutes; and the Supreme Court of Alabama in its said final judgment rendered on the 13th day of June, 1907, erred in determining to the contrary.

"J. M. CHILTON,
"GUNTER & GUNTER,
"HILL, HILL & WHITING,
"Attorneys for J. C. Compton."

LEGAL PROCEEDINGS.

1. While technical objections to proceedings in extradition cannot be urged on habeas corpus, such proceedings are open to attack for defects of substance going to their validity.

Ex Parte Reggel, 114 U. S. 642.

2. The extradition proceedings were invalid in that they were not accompanied by a "copy of an indictment found or an affidavit made before a magistrate" as required by Section 5278 of the Revised Statutes.

3. The extradition proceedings failed to disclose that any charge of crime was pending in any court or before any magistrate in the State of Georgia.

The affidavit of Patterson was insufficient as a predicate for a demand by the Governor of Georgia for that

(a) The affidavit purports to set out transactions between Compton and other parties and there is nothing to disclose that Patterson, the deponent, had any personal knowledge of any of the facts stated. This, in connection with the fact that he deposes to the statements made only to the best of his knowledge and belief renders it wholly insufficient.

Rice vs. Ames, 180 U. S. 371;
Ex parte Hart, 63 Fed. Rep. 249;
Sc. 28 L. R. A. 80, and notes.

(b) The affidavit was made before a Notary Public. Such an officer is not a committing Magistrate under the laws of Georgia nor could he issue process of arrest of an offender. It is insisted that while this is true, the affidavit furnished a sufficient predicate for an information since the Statute—Code of Georgia, Sec. 884, authorizes an affidavit in preliminary proceedings, to be made "to the best of his knowledge and belief." Record p. 31..

The answer is, first, that the Statute of Georgia cannot over-ride the provisions of the Federal Statute on the subject, and next, that the affidavit was not made in a preliminary proceeding, but under the special Act

which requires in its eleventh Section that it should show "a crime has been committed." Record p. 29 (top).

(c) The affidavit did not comply with Section 1275 of the Code of Georgia in that, first, it failed to state the full name of the defendant; next, that it failed to state that the requisition is not wanted for the purpose of enforcing the collection of a debt, or for any private purpose whatever, but solely for the purpose of a criminal prosecution as provided by law. Record pp. 31-32. While this latter requirement might have been the subject of a special affidavit as was here attempted, we insist the special affidavit did not comply with the statute. Record, Section 4.

(d) The affidavit did not charge a "crime" under the laws of Georgia in that it fails to state that Compton ever in fact signed the name of J. W. Chastain & Son to the check; in that it fails to state to whom Compton made the statement that he was a partner of J. W. Chastain and had the right to sign the name of the firm, and in that it fails to show that Clyatt had possession of the property and yielded up such possession to Compton. These omissions, we insist, are matters of substance which affect the validity and not the mere regularity of the affidavit.

In Barrier vc. The State, 142 Ala. 72, quoting from Hurd on Habeas Corpus 611, it is said: "The affidavit, when this form of evidence is adopted, must be so explicit and certain that if it were laid before a magistrate it would justify him in committing the accused to answer the charge."

4. On some if not all of the foregoing grounds, we insist, that the demurrers to the return should have

been sustained and that the Supreme Court of Alabama erred in holding otherwise.

5. The trial Court erred in admitting additional evidence. The extradition proceedings themselves must have been sufficient, unaided by extraneous evidence. But if any evidence was competent, we insist the Court below erred in admitting the following:

(1) The Code of Georgia was not sufficiently identified or authenticated. At common law an authenticated copy of the statute from its proper custodian would have been the best evidence and such would have been also true under the statutes of Alabama, unless the volume had purported to be published under authority of the State of Georgia. We insist that it did not so appear. Record p. 30.

It is possible that this objection was waived by the fact that Compton himself, after the volume had been introduced, utilized one of its sections in evidence, but we do not concede that this operated a waiver.

(2) The special act creating the Inferior Criminal Court of Atlanta was not sufficiently authenticated to be admitted in evidence, and the Court erred in admitting the testimony of an attorney for the purpose of proving the existence of the Special Act and the existence of the Code. The Court erred in permitting an attorney to testify in respect to it.

ARGUMENT.

First. We are aware of the principle that mere irregularities cannot be availed of on collateral attack, and that defects to be available must be of a substantial character—such as to affect the validity of the proceeding.

But the affidavit, where one is relied upon as the basis of the proceeding, must at last conform to the requirements of the Constitution and laws of the United States "designed for the protection of life, liberty and property in all the States of the Union."

Ex parte Reggel, 114 U. S. 642.

"The Act of Congress provides for a method that is summary in its effect, and it must therefore be strictly complied with."

Ex parte Morgan, 20 Fed. Rep. 298.
In re Mohr, 73 Ala. 503.
Barrier vs. The State, 142 Ala. 72.

Second. Section 5278 of the Revised Statutes requires that there shall be produced as a predicate for the warrant of the Governor of the asylum State, evidence that there is a prosecution for a crime pending in the demanding State, in one of two forms, namely: In the form of an "indictment found", or of "an affidavit made before a Magistrate."

Where there is an indictment, its existence would supersede any affidavit made in the same connection.

The Solicitor General as a part of the extradition proceedings in Georgia which were set up in the return as the authority for the detention of Compton, stated in a communication to the Governor of Georgia that, "two certified copies of the bill of indictment are herewith forwarded as required by law." This statement can neither be regarded as a mistake nor as false. It must be taken as absolutely true since it is made officially and relied upon by the Agent of the State of Georgia.

Yet no indictment appears in the proceeding. One exists and was lodged with the Governor, the Solicitor General states, but instead of an indictment, an affidavit is included as justifying the proceeding.

The fact that an indictment exists and that no copy of it is certified is of itself fatal.

Third. But assuming that the affidavit of Patterson (Record pp. 4-6) is the authority relied upon as disclosing a pending prosecution, we insist it was insufficient, for the reasons already assigned in the third proposition of Law.

(a) The affidavit does not disclose that the deponent, Patterson had personal knowledge of a single fact stated in it.

He professes to give an account of transactions between Compton and numbers of other persons, but not one with himself. Not only so, but he fails to state the sources of his information. I take it to be absolutely settled by the decision of this Court in Rice vs. Ames, 180 U. S. 371, that it must either appear that the deponent had personal knowledge of the facts stated or that he must state in the affidavit the sources of his information. In the case cited the complaint contained four counts. In the first, the defendants were charged upon information and belief, and in the other three, absolutely with the commission of an offense. This Court declared that the first count of the complaint under which the proceedings were finally heard, "was obviously insufficient", since the charges were made solely upon information and belief, and no attempt was made even to set forth the sources of information or the ground of affiant's belief. "This is bad," said the Court, "even in extradition proceedings which are en-

"titled to as much liberality of construction in further-
"ance in the object of the treaty as is possible in cases
"of a criminal nature. Nor is it saved by the fact that
"Grear described himself as Government Detective for
"the Province of Ontario, and duly authorized by the
"Attorney General to act as the agent of the Govern-
"ment prosecuting extradition proceedings.

Ex parte Smith, 3 McLean 121, 135 Fed. Cas. No. 12968;

Ex parte Lane, 6 Fed. Rep. 34;

In re J. L. Young Mfg. Co. (1900) 2 Ch. 753.

"A citizen ought not to be deprived of his personal "liberty upon an allegation which, upon being sifted "may amount to nothing more than a suspicion. While "authorities upon the subject are singularly few, it is "clear that a person ought not to be arrested upon less "direct allegations than are necessary to authorize the "arrest of a fraudulent or absconding debtor," ets.

The Court later in the opinion declares that it is not intended to hold that every complaint must be sworn to positively, by some one who has a knowledge of the facts, but that after inquiry, it is sufficient if the sources of information appear. Nothing of the kind appears here.

In Ex Parte Hart, 28 L. R. A. 801, cited supra,—a decision of the U. S. Cir. Court of Appeals, the affidavit was made by the prosecuting officer who swore: "That he has read the foregoing information; knows the contents thereof, and believes the same to be true." The affidavit was held insufficient. The Court said: "The information is verified by the prosecuting attorney, who not that they are true. This is not such charging of the swears that he believes the contents thereof to be true,

commission of a crime before a Magistrate of the State as is contemplated by the Statute. For the purpose of an affidavit to be used for the arrest and removal of the fugitive from justice this is not sufficient. The affidavit required in such cases should set forth the facts and circumstances relied on to prove the crime under the oath or affirmation of some person familiar with them, whose knowledge relative thereto justifies the testimony as to their truthfulness, and should not be the mere verification of a court paper by a public official who makes no claim to personal knowledge as to the subject matter of the same."

Ex Parte Smith, 3 McLean 121, Fed. Cas. No. 12968;
See Doo Woon, 18 Fed. Rep. 898;
Ex Parte Morgan, 20 Fed. Rep. 298.

By requiring such an affidavit, the liberty of the citizen is to a greater extent protected, and the Executive upon whom the demand is made is thereby enabled to determine if there is cause to believe that a crime has been committed," etc.

An affidavit purporting to be made "to the best of affiant's knowledge and belief", as in the present case, without showing that he had any knowledge and without stating the sources of his information or saying that he had any belief upon the subject, is, we submit, wholly insufficient as a charge of crime.

Nor does it help the matter that such an affidavit is authorized by the Code of Georgia in *preliminary proceedings.*

In the first place, this was not a preliminary proceeding.

In the next, while, as stated in Ex Parte Hart, supra, each State may adopt its own mode of procedure, they must comply, in extradition, with the provisions of the Federal Statutes.

If those Statutes properly construed, require, as decided by this Court, that the affidavit may not be made upon mere information and belief, then the existence of a Statute of Georgia so authorizing is not in compliance with the Federal Statutes.

Without reference, therefore, to the question whether the Code of Georgia was properly before the Court, we submit that the fact that it authorizes such an affidavit in *preliminary proceedings*, is no answer to our objection that it is insufficient in *extradition proceedings*. We may also mention that the special act creating the Criminal Court of Atlanta requires that the affidavit should show "that a crime has been committed." See Sec. 11 of Act, Record p. 29 (top).

The Special Statute is as strong as the Federal Statute in requiring that a charge of the commission of a crime should be made, and evidently has no relation to the affidavit required in the preliminary proceedings before a Magistrate.

In Ex Parte Lane, 6 Fed. Rep. 3440, the complaint was made by one Baxter, who being duly sworn, saith, that "on his best information and belief," etc. The terms are nearly identical with those used in the present affidavit. It was held insufficient. The Court said: "The personal liberty of the citizen ought not to be interferred with upon an allegation so loosely framed."

No indictment for perjury could be laid on an affidavit such as the present, since the issue would not be whether the facts were truthfully stated, *but whether*

they were stated to the best of the affiant's knowledge and belief.

We submit that such loose statements should not be tolerated in a proceeding where a citizen is to be taken from his home and tried in a foreign jurisdiction.

(b) The Federal Statute recognizes the existence of a pending prosecution in the demanding State, in one of two forms: First, an "indictment found"; and next, a preliminary prosecution pending before a Magistrate.

Taking it as true for argument's sake, that an information may take the place of an indictment, we have here neither an information nor an indictment, though the Solicitor General certifies that two copies of an indictment accompanied his demand upon the Governor for extradition. Having no indictment or information, there must appear some proceeding pending before a "magistrate." This affidavit does not disclose one. It might as well have been made before a Circuit Clerk as a Notary Public. He is a mere commercial officer who may administer affidavits but has no authority to issue process of arrest or to make a warrant returnable before any other officer. The most that can be said is that this affidavit if it was otherwise sufficient, might have been made the predicate for action by the Solicitor in filing an information.

But while it may have warranted an information, it did not follow that one would be filed or should be filed. Whereas, in an indictment or warrant on preliminary examination it *does* follow that the defendant shall be arrested, tried and convicted, committed or discharged. A preliminary affidavit, in short, is a prosecution commenced before some magistrate, while the affidavit here is not a prosecution commenced, but is only authority

for the commencement of a prosecution, if it reaches that dignity.

A mere affidavit before a Notary Public, returnable before no officer and which had not been acted upon in the procurement or filing of an indictment or information and upon which no information or indictment follows as of course, cannot, we submit, be treated as an "affidavit made before a Megistrate"; and no other authority is needed to the proposition than the plain words of Section 5278 of the Revised Statutes.

In re Waller, 36 Fed. 681, is cited as an authority against our contention.

In that case it will be seen that the City Court of Milwaukee had full jurisdiction of particular offenses and that it was to be exercised on affidavit made before the Court. The Court consisted of a Judge and Clerk and the affidavit was made before the Clerk. It was held that under these circumstances the court acquired jurisdiction; that "before" meant "in the presence of."

The absence of analogy between the case cited and the present one is too obvious for discussion.

(c) The affidavit was defective in not stating the full name of the defendant.

While the State of Georgia can make no privisions in respect to extradition proceedings in conflict with the Federal Statutes, it should at least be bound by its own Statutes in the premises.

It is provided by Section 1275 of the Code of Georgia,

> "In addition to any rules that are now or may hereafter be adopted by the Governor, the following rules shall be observed as a condition precedent to obtain a requisition by him for the extradition of any fugitive from the justice of this State:

> "1. The application for a requisition as aforesaid must be made to the Governor of this State by a Solicitor General, or a Solicitor of a County Court, Judge of a City or County Court, or the Mayor of any City or Town of this State, and must show the full name of the fugitive for whom extradition is asked, the crime charged, the State or Territory to which he has fled, the full name of the person suggested to act as Agent for this State to receive and convey said fugitive to this State," etc.

Record p. 31:

Here the statement of the Solicitor General fails to comply with this requirement—only the initials of Compton being given. Record p. 23.

The Statute further requires in sub-division one:

> "The application must also show that the ends of public justice require that the fugitive be brought back to this State for trial, and that the requisition is not wanted for the purpose of enforcing the collection of a debt, or for any private purpose whatever, but solely for the purpose of a criminal prosecution as provided by law."

The application by the Solicitor General appears on page four of the Record. There is an entire failure to comply with this sub-division of the Statute—the only statement on the subject being that the Governor is asked to make a requisition "for the extradition of the said J. D. Compton in order that he may be brought back to the State of Georgia to stand his trial according to law, for which purpose alone he is wanted."

The law makers well knew the abuses that had aris in the use of extradition proceedings—how they h been perverted into an engine of oppression to com citizens of one State on pain of removal to a forei jurisdiction to stand a threatened trial to pay a d which in many instances was, to say the least, of qu tionable validity.

To meet this abuse, it was expressly required "a condition precedent to obtain a requisition" that the ficer requesting action at the hands of the demandi State should certify officially "that the ends of pub justice require that the fugitive be brought back to t State for trial, and that the requisition is not want for the purpose of enforcing the collection of a debt for any private purpose whatever, but solely for the p pose of a criminal prosecution as provided by law."

Unless the State of Georgia can ignore its own st utory provisions made in respect to the identical p ceeding, the demand upon the Governor was fatally fective; and being made by statute a condition pre dent to the issue of a requisition, the requisition m fall with it.

(d) The affidavit did not charge a "crime" under laws of Georgia.

While the offense denounced by the statute is term "cheating and swindling" and a violator "a comm cheat and swindler". The statute in reality defines offense generally known as obtaining property by fa pretenses.

While it is alleged that Compton represented that was the partner of J. W. Chastain and had a right sign the name of the firm to the draft and that this r resentation was false and deceived Clyatt, the manag

of the Stock Yards, it will be noted there is a total absence of any averment that Compton in fact signed the name of J. W. Chastain & Son to the draft.

This would appear to be essential under the statute and is such a substantial defect that no crime is charged.

In Barrier vs. The State, 142 Ala. 72, it is said, quoting Hurd on Habeas Corpus 611: "The affidavit, when this form of evidence is adopted, must be so explicit and certain that if it were laid before a magistrate it would justify him in committing the accused to answer the charge." This was said in a proceeding of this kind—extradition.

Moreover, while it alleges that false representation was made, the affidavit fails to allege to whom such representation was made.

Finally: To constitute the crime of obtaining property by false pretenses, it must appear that some one who was in lawful possession and control of the property yielded such possession on faith of the truth of the pretense.

> "An indictment for obtaining property by false pretense should allege that the pretenses were relied upon by the person defrauded and that by means of such pretense he was induced to part with the possession of the property acquired by the defendant."
>
> Ency. Pl. & Pr. Vol. 8, p. 870;
> Copeland vs. State, 97 Ala. 30;
> Tennyson vs. State, 97 Ala. 78;
> Coles vs. State, 50 Ala. 454.

To substantially charge an offense under the Statute, the affidavit should have alleged that Compton con-

tracted with the several owners named for their stock; and that it was a part of the contract that he should have possession of the same when he should pay the agreed price to Pat J. Clyatt, the Treasurer of the Stock Yards Company, as agent of the sellers; that Clyatt had authority to deliver such possession on such payment. That Compton made the representations alleged to Clyatt, as such agent, and signed to the draft the name of J. W. Chastain & Son; and that the statements were false and made with intent to deceive and that by means thereof Compton obtained possession of the property from Clyatt who had possession of the same as the agent of the owners.

Most of the essential averments are absent. It is not alleged, as we have said, that Compton signed the name of J. W. Chastain & Son to the draft; or that after he contracted with the owners for the purchase of the property, delivery of possession was postponed until he should pay for same. Nor is it alleged that Clyatt, who received the draft, was in possession of the property or had authority to deliver it or that he in fact delivered it—the only averment in the latter connection being that he "allowed the said J. D. Compton to take and ship said stock away as above stated"; and there is an entire omission to allege to whom Compton made the statement of his authority.

5th. The trial Court erred in sustaining the demurrers on some if not all of the foregoing grounds, going to the sufficiency of the affidavit.

It will be seen that the return did not disclose the Special Act creating the Criminal Court or any other authority for predicating a demand for extradition

upon a mere affidavit before a Notary Public which was not returnable before any Court or officer.

We submit that if the return needed to be supplemented in order to justify the detention of the prisoner, the supplementary facts should have been stated in it.

When the State joined in the issue of law raised by the demurrers, the question presented was, of course, the sufficiency of the return as it stood. The subsequent effort to supplement it by extraneous evidence was therefore an admission that the proceedings were defective in the absence of such evidence, if such an admission were needed. The return should be complete in itself, especially when the State insists upon it as it stands, by joining issue on the demurrers interposed to it.

Aside from this, we insist the Court below erred in its admission of evidence.

(1) The Code of Georgia was improperly admitted.

The approved mode of authenticating a foreign statute is by a copy duly authenticated by its legal custodian.

Inerarity vs. Mimms, 1 Ala. 660.

We have a Statute in Alabama—Code 3988, as follows:

> "Transcripts of acts of Congress, or of the statutes of any other state or territory of the United States, certified by the Secretary of State of this State as being deposited in his office, or as being deposited in the Supreme Court library; and public or private statutes, or the proceedings of any legislative body, purporting on the face of the book to be printed by authority of the government, or State, or territory, are evidence without further proof."

The same Statute in a former Code was construed by the Supreme Court of Alabama, in Johnson vs. State, 73 Ala. 403, where Brickell, C. J., said: "The mere declaration on the title page of the volume that it was 'published by authority' not indicating the authority—that it proceeded from any of the recognized departments of the State Government, does not render it admissible under our statute."

In Edmonds vs. State, 79 Ala. 48, a volume was introduced "purporting to be the General Act of Tennessee passed on the 17th day of December, 1899, and contained in a book which purported to be the Statutes of the State of Tennessee passed by its Legislature at the Session of 1869-70, which said Act is printed on page 45 of said book and is in the words and figures following:" etc. Stone, C. J., said: "Construing this Statute, we, in Johnson vs. State, held that it was not enough that the book offered in evidence purported on its title page to have been 'published by authority'. Our ruling was that to be admissible in evidence the book must purport to have been published by the authority of the Government by whose Legislature the Statute purports to have been enacted." To make such books self-proving, it must appear on its face or title page, to have been printed by authority of the State."

It will be readily seen that the Code of Georgia offered did not meet the requirements of the Statute.

We have set out its title page. It professed to be the Code of Georgia "prepared by John L. Hopkins, Clifford Anderson and Joseph R. Lamar" and to have been published by a private printing house. Record p. 30.

This of course was wholly insufficient, and the court clearly erred in admitting the volume.

Was the error waived by the subsequent use made of the same volume by Compton in introducing one of its sections? It is said "an objection to evidence is waived by the subsequent introduction of the same evidence by the objecting party, or of evidence to the same effect or tending to prove the same facts."

Encly. of Ev. Vol. 9, p. 132.

But it is said: "A party does not waive an objection to incompetent or irrelevant evidence by offering similar improper evidence in contradiction or rebuttal." Ibid, p. 133.

Salt Lake City vs. Smith, 43 C. C. A. 637.

The State insisted that the fact that the volume appeared to have been filed in the State of Georgia in the office of the Librarian of Congress was one of the modes of proof prescribed by the Statute.

We reply, first, that if by that act the State of Georgia obtained the exclusive right to publish the book, it would merely disclose that fact and not that the book had been published by its authority; next, that there is no evidence of any authority upon the part of the State of Georgia to copy-right the volume.

Only private authorship can be protected by copyright; it does not include public laws. The whole subject will be found reviewed in Callaghan vs. Myers, 128 U. S. 617.

In Davidson vs. Wheelock, 27 Fed. Rep. 61, it is held that the laws of a State and public records are subject to inspection by every one and that the Legislature could not confer upon a compiler of such laws an exclusive right to publish them.

Finally, the statement that the volume has been filed according to the Act of Congress in the office of the Librarian is not evidence that the volume has been copy-righted. By the Act of Congress of June 18, 1874, 18 Stat. at Larg. p. 78, such filing is a pre-requisite to the maintenance of a suit for infringement. This is the only effect.

Several facts must be proved to establish a valid copy-right and there is no Act of Congress or State Statute making the notice of the deposit in the office of the Librarian, evidence of the fact that the volume has in fact been copy-righted. As we have said, it is only the predicate for a suit for damages.

The State introduced the volume with the view to sustaining the affidavit as a preliminary charge.

Compton introduced another section of the same book, section 882, for the purpose of showing that a Notary Public was not included as among the committing magistrates under the laws of Georgia. We submit that Compton was not called upon to permit such sections to be admitted as were conceived to operate against him, without the privilege on his part of showing by another section that even if the volume was authentic, those introduced by the State were not controlling.

(2) In admitting the Special Act creating the Criminal Court.

On the title page (Record p. 29, bottom) the following appears:

> "Acts and Resolutions of the General Assembly of the State of Georgia, 1890-91, Vol. 11. Compiled and Published by authority. Atlanta, Ga., George

W. Harrison, State Printer (Franklin Publishing House) 1892."

While the Acts purported to have been "published by authority," this mere declaration on the title page of the volume that it was 'published by authority' not indicating the authority—that it proceeded from any of the recognized departments of the State Government, does not render it admissible under our Statute."

Johnson vs. State, 73 Ala. 493.

(3) The testimony of the Attorney Bryant, Record p. 32, (bottom) was wholly inadmissible to prove the statute laws of the State. We need not discuss the proposition. It has been expressly decided in Alabama.

While experts may prove the construction that laws had received, they cannot prove the existence of statutes.

Bush vs. Garner, 73 Ala. 162.

Proof of a written law of another State cannot be made by the deposition of a witness.

Inerarity vs. Mimms, 1 Ala. 660.

PAROL EVIDENCE.

It is of course fundamental that on Habeas Corpus to test the validity of extradition proceedings the Court will not hear evidence upon the question of the guilt or innocence of the petitioner.

But the rule should work "both ways."

If the State was permitted to introduce evidence *aliunde* to sustain the petition, the same privilege should be accorded the petitioner. The Court excluded the evidence offered in behalf of Compton, but admitted the parol evidence against him.

DECISION OF THE SUPREME COURT.

The Supreme Court of Alabama affirmed the case on general principles—declining to take notice of exceptions to general principles.

In respect to the introduction of the Code of Georgia, it asserted that where the record purports to be published by authority of the Legislature the volume is admissible. This proposition was not denied, but we did and do deny that the volume purported to be published by authority of any department of the State Government.

The Supreme Court also bases its ruling upon the inadmissibility of the volume upon the fact that it had been copy-righted—ignoring our contention that the State had no right to copy-right public documents.

The State held that the objection was waived by the act of Compton in making use of the same volume—pretermitting the suggestion that it was in rebuttal or contradiction to other parts of the same Record. It was not the same testimony, but a different part of the same volume in contradiction to the case of the State.

Our objections to the affidavit were overruled on the ground that affidavits in preliminary proceedings in Georgia may be made to the best of deponent's information and belief.

Our proposition that the proceeding was not a preliminary one; that it furnished no predicate for the issuance of a warrant; and that it was returnable before no court and was not issued by a magistrate are all ignored.

Prediminary proceedings are commenced before a magistrate. A Notary Public is not a magistrate under

the laws of Georgia. This and every other consideration which we urged as showing that the affidavit was insufficient *under the Statutes of the United States* as a predicate for a demand upon the Governor were wholly ignored—the only reason assigned being that on preliminary proceedings the laws of Georgia authorize an affidavit upon information and belief.

The necessity that the affidavit should be sworn out before a magistrate is emphasized in the opinion with the result that the affidavit is held sufficient, when it clearly appears it was not sworn out before a magistrate.

Of course the decision of the Supreme Court of Alabama is wholly inconclusive upon the subject. If it were otherwise, there would exist no reason why a writ of error should be allowed from it.

Moreover, all the questions raised are Federal questions—relating to a right given by a statute of the United States.

While the statute confers the right of extradition, it is careful to guard the rights of the citizen by a specific statement of the conditions under which extradition is authorized.

These conditions in favor of the citizen are entitled to the same consideration as the provision for extradition. Indeed, they are conditions precedent to the right.

We respectfully submit that the trial Court and the Supreme Court of Alabama both erred in holding the extradition proceedings sufficient.

[redacted]

[redacted]

[redacted]

THE SUPREME COURT OF THE UNITED STATES

October Term, 1908.

J. D. COMPTON, Plaintiff in Error,

No. 175. vs.

THE STATE OF ALABAMA.

BRIEF OF ALEX. M. GARBER, ATTORNEY GENERAL, AND THOS. W. MARTIN, ASSISTANT ATTORNEY GENERAL FOR THE STATE OF ALABAMA.

STATEMENT OF THE CASE:

The plaintiff in error petitioned the Judge of the City Court of Montgomery for the writ of habeas corpus, discharging him from arrest under an executive extradition warrant issued by the Governor of Alabama upon a requisition from the Governor of the State of Georgia. The trial judge denied his petition and remanded the plaintiff in error to the custody of the designated agent of the State of Georgia; and he then prosecuted [illegible]peal to the Supreme Court of Alabama. This order was affirmed,—Compton v. State, 152 Ala. 68,—and the plaintiff in error then sued out his writ of error to this court.

To the return of the Sheriff of Montgomery County and the agent of the State of Georgia, reciting the arrest and detention of petitioner under an executive warrant, etc., are attached the warrant of the Governor of Alabama, authorizing the arrest of petitioner, the commission of the agent of the State of Georgia, and the requisition of the Governor of Georgia upon the Governor of Alabama, reciting in effect, that it was made to appear by the annexed copy of the affidavit, which he certified to be authentic, that J. D. Compton stands charged with the crime of being a common cheat and swindler committed in the County of Fulton in the State of Georgia, and that he has fled from the justice of that State, and taken refuge in the State of Alabama, etc., with the usual request that said Compton be apprehended and delivered to the designated agent of the State of Georgia. To the requisition is also attached a certificate of Lowry Arnold, Solicitor of the Criminal Court of Atlanta, directed to the Governor of the State of Georgia, to the effect that one Patterson had sworn out an accusation against Compton for the offense of being a common cheat and swindler; that Compton has fled to the State of Alabama, where he was then a fugitive from justice, and requesting the granting of a requisition on the Governor of Alabama for the extradition of said Compton in order that he might be brought back to the State of Georgia and stand for trial according to law; and also two affidavits of J. W. Patterson,—one to the effect that he was prosecutor in the case of State v. J. D. Compton, charged with being a common cheat and swindler, and for whom an application for requisition had been made, and that the requisition was wanted for the sole purpose of punishing the accused, and the other charged in detail the offense for which the petitioner was wanted, and was sworn to before one W. W. Troy, "N. P., of Fulton Coun-

ty, Georgia." To this affidavit is attached the certificate of Arnold Broyles, Clerk of the Superior Court and ex officio Clerk of the Criminal Court of Atlanta, under his official seal, to the effect that the foregoing affidavit was a true copy of the affidavit of J. W. Patterson, accusing J. D. Compton of the offense of misdemeanor, the original of which was on file in his office. (R. pp. 16 to 21.)

Section 658, (R. p. 32) and 670 (R. p. 31) of the Criminal Court of Georgia, introduced in evidence on the trial of the State, defined the offense with which the petitioner was charged, as a misdemeanor.

Sec. 883 of the same Code (R. p. 31) specifies in substance what an affidavit for the arrest of a defendant charged with violating the penal laws of that State, shall contain; while section 884, prescribes the form of the affidavit (R. p. 31).

The Act of the Legislature of Georgia, creating the Criminal Court of Atlanta, introduced in evidence by the State, provides in section 11 (R. p. 27) that criminal prosecutions in said court may be instituted by written information or accusation, plainly setting forth the offense charged and founded upon affidavit, and that the Judge of that court, upon affidavit being made that a crime has been committed, may issue his warrant for the arrest of the offending party.

Section 125 of the Code of Georgia (R. p. 31), regulates the procedure for obtaining requisitions.

ASSIGNMENTS OF ERROR.

The following are the assignments of error insisted upon (R. p. 46):

1. Said Supreme Court of Alabama erred in determining that an affidavit made by J. M. Patterson as a predicate for the proceedings in the State of Georgia, was a

sufficient compliance with the provisions of Sec. 5278 of the Revised Statutes of the United States.

2. Said Supreme Court in its final judgment in said cause erred in holding and determining that the proceedings had in the State of Georgia, as shown by the record, were sufficient to authorize the Governor of Alabama to issue his warrant of arrest, when tested by the provisions of Sec. 5278 of the Revised Statutes of the United States.

3. The proceedings shown by the return to the writ of habeas corpus in said cause, and the evidence supplementary thereto introduced before the judge on hearing said petition for habeas corpus, failed to show that there had been an indictment found or an affidavit made before a magistrate of the State of Georgia charging the said J. D. Compton with having committed treason, felony or other crime, as required by Sec. 5278 of the Revised Statutes; and the Supreme Court of Alabama in its said final judgment rendered on the 13th day of June, 1907, erred in determining to the contrary.

BRIEF.

While it is true that section 5278 of the Revised Statutes of the United States provides for the production before the Governor of the asylum state, upon whom requisition is made "of a copy of the indictment found, or the affidavit made before a "magistrate" of the State or Territory, etc. ,the term "magistrate" as here used evidently means nothing more than that it shall be made reasonably to appear by affidavit that the prosecution has been begun. Assuming that the letters "N. P." affixed to the signature of the officer before whom the affidavit was made indicated that he was a notary public, the certificate of the Clerk of the Superior Court of Atlanta, under his seal of office, to the effect that the affidavit had been

filed in his office, within itself shows, and certainly when taken in connection with the provisions of section 11 of the Act creating the Criminal Court of Atlanta, distinctly shows that the prosecution was begun pursuant to the rules of law provided for that court. The Act simply provided for the making of the affidavit as the initial step in the beginning of the prosecution—not before any particular officer, *but before any one authorized to administer oaths,* upon which affidavit an information might be filed and trial had.

In Hooper's case, 52 Wis., 699, it was said: "The Constitution of the United States does not prescribe the form in which the charge must be made; and while the statutes speak of an indictment found or an affidavit made before a magistrate, it cannot be intended to exclude a case where the charge is in the form of a criminal information, as in this state all offenses are triable by information filed by the District Attorney of the proper county, and it will be presumed that the demanding state has authorized prosecution by information."

When prosecution by information has been adopted by a state making demand for requisition, it must be considered *prima facie* evidence of the crime charged against the accused under the laws of that state.

In re VanSciever, 42 Neb. 772;
State v. Richardson, 34 Minn. 115;
State v. Hufford, 28 Iowa 391;
Compton v. State, 152 Ala. 68.

In Davis's case, 122 Mass. 324, the Court said:

"The warrant of the governor of the commonwealth is *prima facie* evidence, at least, that all necessary legal prerequisites have been complied with, and, if the previous proceedings appear to be regular, is conclusive evi-

dence of the right to remove the prisoner to the State from which he fled."

In ex parte Devine, 74 Miss., 715, the court said:

> "An executive warrant is prima facie evidence that all necessary prerequisites have been complied with—as, that there was an affidavit or indictment emanating from the authorities of the demanding state charging the accused with crime against the laws of that state."

And to the same effect is Lewis' case, 79 Cal. 95.

Ex parte Hart, 63 Fed., 249, does not support the position of opposing counsel. It was contended in that case by counsel for petitioner that an "information" filed was not the equivalent of an affidavit, but it will be observed that there was no affidavit, except the mere formal affidavit of the prosecuting attorney, who swore that "he believes the contents thereof to be true"—not that they were true. While the court in that case held that a mere information was insufficient to authorize the issuance of an executive warrant of arrest, it did not decide that had the information been sworn to in such a manner as to constitute it an affidavit, it would not have been sufficient. All that the court did there decide was that the verification of the prosecuting attorney, who simply swore that he believed the contents thereof to be true, was insufficient.

The next objection insisted on is that the affidavit is insufficient, in that it is predicated upon "the best of affiant's knowledge and belief;" but it is sufficient, we take it, in refutation of this attack, to call attention to the affidavit itself, and, upon examination, it will be found that it is not predicated upon "information and belief" *of the affiant when it comes to the statement of*

the facts. The affidavit begins: "Came in person before me J. W. Patterson, who being duly sworn, deposes and says on oath that to the best of his knowledge and belief, J. D. Compton is guilty of the offense of a misdemeanor in this:" Then follows a clear, distinct and positive statement of the facts, *and not upon information and belief.* Affiant only affirmed that to the best of his knowledge and belief Compton *was guilty of the offense of a misdemeanor,* that being merely his conclusion of the offense from the facts stated. He then proceeds to state the facts without equivocation. This was the construction given the affidavit by the Supreme Court of Alabama; and, said the court, "These were entirely sufficient on which to base the issuance of a warrant of arrest."

Moreover, it will be seen by Section 884 of the Criminal Code of Georgia (transcript, p. 38) that the affidavit in this respect, was strictly in accordance with the form of procedure in that state; and even had affiant deposed to the facts which he detailed as upon the best of his knowledge, information and belief, the affidavit would not have been objectionable since the law implies this much in all affidavits (36 Fed. 681-5).

It is suggested by opposing counsel that it did not appear that Patterson, who made affidavit, had personal knowledge of, or, in other words, had any connection with the transaction complained of. But it is sufficient to say, in answer to this, that one of the affidavits attached to the requisition shows that he deposed to the facts as being true, and that he was the prosecutor in the case, and when a witness or party deposes to facts, the presumption of the law is, until the contrary appears, that he has knowledge of the facts to which he deposes.

It is next insisted that the affidavit charges no offense under the law of the State of Georgia. If none of the provisions of the Criminal Code of Georgia had been introduced in evidence, the presumption of law, arising from the requisition of the Governor of Georgia would have been that an offense had been committed in that state, and, unless the contrary was made to appear, this would be a conclusive presumption. The courts of the asylum state will not undertake to determine whether or not an offense has been committed, unless there is evidence upon the proposition. It will be assumed that the Governor of the demanding state granted the requisition after it was made to appear satisfactorily to him that the offense had been committed under the laws of that state.

But there can be no doubt here of the fact that the affidavit sufficiently charges an offense under the law of the State of Georgia. Section 1275 of the Criminal Code of that State, as also Section 670, introduced in evidence by the State, show that the offense charged was a crime in that State. Much is said in brief of opposing counsel to the effect that the affidavit does not charge that Compton signed the name of Chastain & Son to the draft which he presented and upon which he obtained credit. In order to constitute the offense, it was not necessary that he should have made such a statement. The offense was complete when he tendered to the prosecutor, or the person with whom he was dealing, a check bearing the signature "J. W. Chastain & Son—J. D. Compton," with the statement that he was a member of the firm of J. W. Chastain & Son, and authorized to draw the check in question, and thereby obtained a large amount of property, which statement is alleged to have been falsely and fraudulently made, for the purpose and with the intent to deceive, and which did deceive.

Certainly it cannot be said that the affidavit was void; and though it may have been defective in one or more averments (which we do not admit to be true) the defendant can take nothing unless "the process under which he is sought to be held is void."

Compton v. State, 152 Ala. 68;
Ex parte Mohr, 73 Ala. 503;
Devine v. State, 74 Miss. 715;
Munsey v. Clough, 196 U. S. 364;
Davis's case, 122 Mass. 324.

It is further insisted that the Act of the Legislature of Georgia and the Criminal Code of Georgia were not sufficiently proven to authorize their introduction in evidence. The title pages of each of these books, we respectfully submit, bear sufficient evidence of the fact that they were published by authority of the State of Georgia to entitle them to be introduced in evidence. But whether this be true or not, counsel for the petitioner waived his objection to the sufficiency of this preliminary proof, in so far as the Criminal Code was concerned by himself offering in evidence one of the sections,—No. 882,—of that volume, (Compton v. State, supra). And again it was shown by a practicing attorney in the courts of Georgia, that these volumes were genuine. Then again by the agreement of counsel, set out in the bill of exceptions, the genuineness of the Act of the Legislature of Georgia, creating the Criminal Court of Atlanta, is distinctly recognized, for the agreement recites that the foregoing "abstract of the Act, creating the Criminal Court of Atlanta" may be set out in the bill of exceptions in lieu of the entire act. It is submitted that any objection to the evidence, on the ground that it was not sufficiently shown that this was a genuine Act of the

Legislature of Georgia, was waived by these recitals. The Supreme Court of Alabama distinctly held that the Georgia Code was sufficiently proven to authorize the introduction of its sections offered in evidence; and the question, being one of evidence, is not open to review by this court.

But independent of this, and conceding for the sake of the argument that there was no evidence of the law of the State of Georgia, then it is clear that the court will presume that the proceeding was regular, that the prosecution was begun in Georgia pursuant to the statutory forms, and the burden was on the defendant to overcome the prima facie case made against him by the introduction of the affidavit, warrant, etc.—Compton v. State, supra; Lewis' case, 79 Cal. 95. And it will be presumed that the requisition of the Governor of the demanding state was predicated upon an affidavit charging a crime under the law of that State.

"A requisition being accompanied by a copy of an affidavit charging the accused with the commission of a certain act, and by the certificate of the Governor of that State that such act constituted a crime under the laws of that state, makes a *prima facie* showing that the accused is charged with a crime in the state from which he fled, and authorizes his arrest."

Tullis v. Fleming, 69 Ind. 15;
Drinkall v. Spiegel, 68 Conn. 441;
In re Hooper, 52 Wis. 669.

In the very recent case of Muncie v. Clough, 196 U. S. 364 (49 L. Ed., 515), it is held that on *habeas corpus* to review the issuance of an extradition warrant by the Governor of the State, the accused is concluded by the *prima facie* case made out by the parties, upon which the

overnor acted, where such accused upon the hearing in
ie *habeas corpus* proceeding waived the right to intro-
uce further evidence; and that the technical sufficiency
the indictment, and any question of the procedure un-
er it, were not open to inquiry on *habeas corpus* to re-
ew the issuance of the warrant of arrest in inter-state
xtradition proceedings.

The provisions of the Code of Georgia, relating to the
ode of obtaining requisitions, have no material bearing
ere, since those provisions are intended only for the
uidance of the Governor of that State, and the presump-
on to be indulged is that they were complied with in
far as he was concerned, when he issued his requisi-
on. Moreover it was wholly immaterial to the defend-
nt, whether such provisions were complied with or not.

There is nothing in the objection that those provisions
equired the full name of the accused to be stated in the
roceedings. This was a mere informality which the
overnor had the right to waive in so far as his requisi-
on was concerned. Moreover, it was expressly decided
the case of Peoples v. Byrnes, 33 Hun. (N. Y.) 98,
hat the "omission to give the Christian names of the
ersons charged," etc., would not justify the executive
the State in refusing to surrender, nor the courts in
eleasing on *habeas corpus.*" In many instances, initials
nly constitute the Christian names.

It is insisted by opposing counsel, that the record
hows the existence of an indictment; and no indictment
eing before the court, the proceeding must fall.

The only reference to an indictment is at the conclu-
on of the certificate of Lowery Arnold, solicitor of the
riminal court of Atlanta, addressed to the Governor of
eorgia, as follows: "* * * two certified copies of the
ill of indictment are herewith forwarded as required
y law" (R. p. 4). Then follows a certified copy of the

affidavit of J. W. Patterson, on which this proceeding is founded, so that it clearly appears that the solicitor used the term "bill of indictment" by error and that he intended to, and did in fact, refer to the Patterson affidavit. The error is self correcting.

Counsel did not make the point of the existence of an indictment, in either of the courts below. Had there been an indictment he would have been diligent to show that fact.

We respectfully insist that the judgment of the court below should be affirmed.

ALEX. M. GARBER,
Attorney General of Alabama.

THOMAS W. MARTIN,
Asst. Atty. Genl. of Alabama.

CASES ADJUDGED

IN THE

SUPREME COURT OF THE UNITED STATES

AT

OCTOBER TERM, 1908.

COMPTON *v.* STATE OF ALABAMA.

ERROR TO THE SUPREME COURT OF ALABAMA.

No. 175. Argued April 20, 1909.—Decided May 17, 1909.

Unless the State demanding the return of an alleged fugitive from justice furnishes a copy of an indictment against the accused or an affidavit before a magistrate as provided by § 5278, Rev. Stat., the executive of the State upon whom the demand is made, may decline to honor the requisition; and, in the absence of such indictment or affidavit, no authority is conferred upon him by § 5278, Rev. Stat., to issue his warrant of arrest for a crime committed in another State.

An affidavit before a notary public is sufficient under § 5278, Rev. Stat., upon which to base a demand for return of a fugitive from justice if such officer is, as he is regarded in Georgia, a magistrate under the law of the State.

Where the papers upon which the requisition for the return of an alleged fugitive from justice is based are regarded as sufficient by the executive authorities of both the States making, and honoring, the demand, the judiciary should not interfere on *habeas corpus* and discharge the prisoner upon technical grounds unless it is clear that the action plainly contravenes the law.

152 Alabama, 68, affirmed.

THE facts are stated in the opinion.

Mr. John M. Chilton for plaintiff in error:

The Federal statute recognizes the existence of a pending prosecution in the demanding State, in one of two forms: First, an "indictment found"; and next, a preliminary prosecution pending before a magistrate.

Assuming for argument, that an information may take the place of an indictment, we have here neither an information nor an indictment, though the Solicitor General certifies that two copies of an indictment accompanied his demand upon the Governor for extradition. Having no indictment or information, there must appear some proceeding pending before a "magistrate." This affidavit does not disclose one. A notary public is a mere commercial officer who may administer affidavits but has no authority to issue process of arrest or to make a warrant returnable before any other officer.

But while it may have warranted an information, it did not follow that one would be filed or should be filed. Whereas, in an indictment or warrant on preliminary examination it does follow that the defendant shall be arrested, tried and convicted, committed or discharged. A preliminary affidavit, in short, is a prosecution commenced before some magistrate, while the affidavit here is not a prosecution commenced, but is only authority for the commencement of a prosecution, if it reaches that dignity.

A mere affidavit before a notary public, returnable before no officer and which had not been acted upon in the procurement or filing of an indictment or information and upon which no information or indictment follows as of course, cannot be treated as an "affidavit made before a Magistrate"; and no other authority is needed to the proposition than the plain word of § 5278, Rev. Stat.

In re Waller, 36 Fed. Rep. 681, is not an authority here. In that case, the City Court of Milwaukee had jurisdiction of particular offenses that could be exercised on affidavit made before the court, and it was held that under those circumstances

the court acquired jurisdiction; that "before" meant "in the presence of."

Mr. Alexander M. Garber, Attorney General of the State of Alabama, and *Mr. Thomas W. Martin* for defendant in error:

The provision in § 5278, Rev. Stat., for the production before the Governor of the asylum State, of a copy of the indictment found, or the affidavit made before a "magistrate" of the demanding State means nothing more than that it shall be made reasonably to appear by affidavit that the prosecution has been begun. Assuming that the letters "N. P." affixed to the signature of the officer before whom the affidavit was made indicated that he was a notary public, the certificate of the clerk of the Superior Court of Atlanta, under his seal of office, to the effect that the affidavit had been filed in his office, within itself shows, and certainly when taken in connection with the provisions of § 11 of the act creating the Criminal Court of Atlanta, distinctly shows that the prosecution was begun pursuant to the rules of law provided for that court. The act simply provided for the making of the affidavit as the initial step in the beginning of the prosecution—not before any particular officer, but before anyone authorized to administer oaths, upon which affidavit an information might be filed and trial had.

The Constitution of the United States does not prescribe the form in which the charge must be made; and while the statutes speak of an indictment found or an affidavit made before a magistrate, it cannot be intended to exclude a case where the charge is in the form of a criminal information, as in this State all offenses are triable by information filed by the District Attorney of the proper county, and it will be presumed that the demanding State has authorized prosecution by information. *Hooper's Case*, 52 Wisconsin, 699.

When prosecution by information has been adopted by a State making demand for requisition, it must be considered *prima facie* evidence of the crime charged against the accused

under the laws of that State. *In re VanSciever*, 42 Nebraska, 772; *State* v. *Richardson*, 34 Minnesota, 115; *State* v. *Hufford*, 28 Iowa, 391; *Compton* v. *State*, 152 Alabama, 68.

MR. JUSTICE HARLAN delivered the opinion of the court.

By an affidavit, proper in form and substantially sufficient in its statement of facts, made before a notary public of Fulton County, Georgia, Compton, the plaintiff in error, was charged with having committed the offense of being a common cheat and swindler. The Solicitor of the Criminal Court of Atlanta officially notified the Governor that the accused had been so charged and had fled to Alabama, and a requisition on the Governor of Alabama was asked for the extradition of Compton to the end that he might be brought back to Georgia to be tried according to law for the offense charged.

The Governor of Georgia thereupon made a requisition on the Governor of Alabama who, having received the requisition, issued his warrant for the arrest of Compton, if to be found in Alabama, and his delivery into the custody of the agent of Georgia. Having been arrested under that warrant by a sheriff, the accused sued out a writ of *habeas corpus* before the judge of the City Court of Montgomery, Alabama, and sought discharge from custody upon the ground that he was illegally restrained of his liberty. The return by the sheriff to the writ justified the detention of Compton under the requisition of the Governor of Georgia and the warrant of arrest issued by the Governor of Alabama.

Upon the hearing of the case before the judge of the Montgomery City Court the accused demurred to the return, and the demurrer having been overruled, he was ordered into the custody of the agent of Georgia for extradition pursuant to law. From that order Compton prosecuted an appeal to the Supreme Court of Alabama, and that court affirmed the order of the Montgomery City Court.

It is contended that the affidavit upon which the Governor of Georgia based his requisition, although certified by him to

be authentic, was not in compliance with the Revised Statutes of the United States; that the proceedings in Georgia were not sufficient to authorize the Governor of Alabama to issue his warrant of arrest; and that the proceedings on the hearing of the petition for *habeas corpus* did not show that there had been an indictment against Compton or such an affidavit before a magistrate of Georgia charging the accused with crime, as is required by the statutes of the United States.

In our judgment the only material question not substantially covered by the former decisions of this court is that raised by the objection that the affidavit in Georgia on which the Governor of that State based his requisition was made before a notary public and not before a "magistrate," as required by the Revised Statutes of the United States enacted in the execution of the constitutional provision relating to fugitives from justice. This specific objection was raised by the assignments of error for the Supreme Court of the State, but that court did not seem to have regarded it as of sufficient gravity to be specially noticed in its opinion. But as the objection is covered by the assignment of errors for this court, and as it asserts a right under the laws of the United States, we deem it appropriate to meet and dispose of it.

The proceedings against Compton were had under § 5278 of the Revised Statutes, as follows: "Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State or Territory to which said person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having commited treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, it shall be the duty of the executive authority of the State or Territory to which said person has fled to cause him to be arrested and secured, and to cause notice of the arrest to be given to the executive authority making such demand, or to

the agent of such authority appointed to receive the fugitive, and to cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within six months from the time of the arrest, the prisoner may be discharged. All costs or expenses incurred in the apprehending, securing and transmitting such fugitive to the State or Territory making such demand, shall be paid by such State or Territory."

Undoubtedly, the statute does not make it the duty of a Governor to issue a warrant for the arrest of an alleged fugitive from justice, unless the executive of the demanding State produces to him either a copy of an indictment against the accused in the demanding State or an affidavit before a *magistrate* of such State charging the fugitive with the commission of crime in the State making the demand. It is, we think, equally clear that the executive of the State in which the fugitive is at the time may decline to honor the requisition of the Governor of the demanding State if the latter fails to furnish a copy of an indictment against the accused, or of any affidavit before a magistrate. But has the executive of the State, upon whom the demand is made for the arrest and extradition of the fugitive, the power to issue his warrant of arrest for a crime committed in another State, unless he is furnished with a copy of the required indictment or affidavit? We are of opinion that he has not, so far as any authority in respect to fugitives from justice has been conferred upon him *by the statute of the United States*. The statute, we think, makes it essential to the right to arrest the alleged fugitive under a warrant of the executive of the State where the alleged fugitive is found that such executive be furnished, before issuing his warrant, with a copy of an indictment or an affidavit before a magistrate in the demanding State, and charging the fugitive with crime committed by him in such State. It is therefore material under this interpretation to inquire whether the affidavit, made the basis in this case of the requisition by the Governor of Georgia, and which is certified to be authentic, was such an affidavit as the Revised Statutes of the United States required (in the

absence of an indictment) to be produced to the Governor of Alabama as the basis of any warrant of arrest that he might issue.

The record shows that the affidavit, a copy of which accompanied the requisition of the Governor of Georgia, was made, as we have already said, before a notary public. Was that sufficient under § 5278 of the Revised Statutes requiring an affidavit to be made before a "magistrate," that is, before one who could properly be deemed a magistrate within the meaning of the law of the State under whose authority he acts as notary public, and in which his duties are discharged? In a general sense a magistrate is a public civil officer, possessing such power, legislative, executive or judicial, as the government appointing him may ordain. In a narrow sense, a magistrate is regarded—perhaps, commonly regarded—as an inferior judical officer, such as a justice of the peace. 2 Bouvier Law Dic. 92. But the appellation of magistrate "is not confined to justices of the peace, and other persons, *ejusdem generis*, who exercise general judicial powers; but it includes others whose duties are strictly executive." Anderson's Dictionary of Law, 643, 644. In *Gordon* v. *Hobart*, 2 Sumner, 401, 405, the question was whether an alderman of Philadelphia, who was invested by law with all the powers and authority of a justice of the peace, was not to be deemed in the strictest sense a magistrate, within the meaning of a statute relating to the acknowledgment of deeds "before a justice of the peace or magistrate." Mr. Justice Story said that the alderman was to be deemed a magistrate within the statute referred to; "for," said he, "I know of no other definition of the term 'magistrate' than that he is a person clothed with power as a public civil officer"—citing 1 Black. Com. 146.

Could a notary public be deemed a magistrate in Georgia? If so, § 5278 of the Revised Statutes was satisfied; for, that statute must be held to mean that a person may be regarded as a magistrate, before whom the required affidavit can be made, if he is so regarded under the law of the State where the

alleged crime was committed. Upon looking into the Code of Georgia we find that provision is made for the appointment of notaries public by the judges of the Superior Courts, on the recommendation of the grand juries of the several counties. Their term of office is four years, and they are commissioned by the Governor, and are "*ex officio* justices of the peace, and shall be removable on conviction for malpractice in office." 2 Code of Georgia, § 4052, p. 982. They are designated as commissioned notaries public. And it is further provided that "Justices, and Notaries Public who are *ex officio* justices of the peace shall keep separate dockets of all civil and criminal causes disposed of by them," and "lay their dockets before the grand juries of their respective counties on the first day of each term of the Superior Court for inspection." *Ib.* 1895, p. 93.

In view of these provisions of the Code of Georgia, we hold that the notary public, before whom the affidavit in that State was made, may be regarded as a magistrate within the meaning of § 5278 of the Revised Statutes of the United States. Such, it must be assumed, was the view of the Governor of Alabama when issuing his warrant of arrest under the authority of that statute. When it appears, as it does here, that the affidavit in question was regarded by the executive authority of the respective States concerned as a sufficient basis, in law, for their acting—the one in making a requisition, the other in issuing a warrant for the arrest of the alleged fugitive—the judiciary should not interfere, on *habeas corpus*, and discharge the accused, upon technical grounds, and unless it be clear that what was done was in plain contravention of law.

No question other than the one herein disposed of is of such importance or difficulty as to require notice at our hands, and we adjudge that as the Supreme Court of Alabama did not by its final order deny any right secured to the plaintiff in error by the Constitution or laws of the United States, its judgment must be affirmed.

It is so ordered.